

**REVIEW OF THE OFFICE OF THE ASSISTANT
SECRETARY FOR CIVIL RIGHTS**

HEARING

BEFORE THE

SUBCOMMITTEE ON NUTRITION, OVERSIGHT, AND
DEPARTMENT OPERATIONS

OF THE

**COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES**

ONE HUNDRED SIXTEENTH CONGRESS

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REVIEW OF THE OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

TUESDAY, NOVEMBER 19, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NUTRITION, OVERSIGHT, AND DEPARTMENT
OPERATIONS,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:14 p.m., in Room 1300 of the Longworth House Office Building, Hon. Marcia L. Fudge [Chair of the Subcommittee] presiding.

Members present: Representatives Fudge, Adams, Hayes, Schrier, Van Drew, Lawson, Panetta, Plaskett, Peterson (*ex officio*), Johnson, Davis, Bacon, Hagedorn, and Conaway (*ex officio*).

Staff present: Kellie Adesina, Malikha Daniels, Jasmine Dickerson, Patricia Straughn, Jennifer Tiller, Dana Sandman, and Jennifer Yezak.

OPENING STATEMENT OF HON. MARCIA L. FUDGE, A REPRESENTATIVE IN CONGRESS FROM OHIO

The CHAIR. Forgive me for being a little tardy this afternoon.

This hearing of the Subcommittee on Nutrition, Oversight, and Department Operations entitled, *Review of the Office of the Assistant Secretary for Civil Rights*, will come to order.

I am going to start with opening statements.

Good afternoon, and thank you for joining us today. The purpose of today's hearing is to ensure the Department of Agriculture functions equally for everyone it serves and employs, regardless of race, gender, ethnicity, or any other protected class.

It is no secret that the USDA has had a controversial history on civil rights. Stories of inconsistent access to USDA programs for socially disadvantaged farmers and ranchers, and unfair treatment of minority women and disabled employees at the Department, no longer wait in the shadows to be discovered.

The Department has committed its wrongs under Democratic and Republican Administrations alike and we can't move to a place of progress on the issue of civil rights without acknowledging that dual responsibility is a key factor in how we got here.

Civil rights, the equal treatment of everyone in the building and outside of it, is fundamentally bigger than the blue/red lens we see things through these days. It is incumbent on all of us to make sure past wrongs are righted.

Furthermore, the emergence of recent stories from current and former staff within the Office of Civil Rights gives us reason to dig

deeper into your leadership and similar actions and patterns from USDA in the past.

To do that, USDA must continue to build on the framework designed by the Obama Administration under then-Secretary Vilsack, to address Department-wide systemic discrimination. That is the only way USDA can begin to make real and fundamental changes in its approach to ensuring fair and equal treatment of minorities, women, and protected classes, both internal and external to the Department.

We have seen the Department pay millions in settlements to black farmers and employees as a part of class actions, and while this represents a much-needed closing of a chapter, it is one chapter in a saga of wrongdoings. It does nothing to address the root cause of the disease.

The responsibility now starts and ends with you. In preparation for today's hearing, the Subcommittee staff contacted USDA on November 12, to request information on the number of vacancies in your office over the last 4 years. Staff also requested details on any management inquiries or reports initiated by employees during your current tenure.

To date, we have yet to receive the information we asked for. The most recent email response from USDA received at 8:40 a.m. this morning lacks sufficient detail and failed to address the Subcommittee's initial inquiry. I can only assume the decision to provide such a response on the morning of today's hearing is intentional.

However, we do know from the information you shared with my office, is there have been significant declines in the number of employees in the Office of Civil Rights from Fiscal Year 2016 to Fiscal Year 2019. There are also inconsistencies and missing information in the data your office shared regarding the number of EEO complaints across the Department. The information only shows data for ten of the 29 USDA agencies, and out of over 300 complaints filed by employees across the ten agencies in Fiscal Year 2019, there were only two findings of wrongdoing out of 300.

Given USDA's very recent history, I don't understand how that is possible. The lack of findings raises serious questions about the EEO process within your office. Even more troubling is your reported history of a lack of EEO findings at your previous places of employment.

Ms. Earp, the Secretary often says USDA's mission is to, and I quote, "Do right and feed everyone." Your charge, Ms. Earp, is to make sure the Department doesn't just feed everyone, it must also do right by everyone, employees and stakeholders alike.

While this is not a confirmation hearing, we are here to make sure that you fulfill that purpose and to make sure that USDA is better off with your being there. That is the job you were sent there to do. Similarly, it is my responsibility to hold you accountable in that work. That is the job I was sent here to do, and I intend to do it.

[The prepared statement of Ms. Fudge follows:]

PREPARED STATEMENT OF HON. MARCIA L. FUDGE, A REPRESENTATIVE IN CONGRESS
FROM OHIO

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The Department has committed its wrongs under Democratic and Republican Administrations alike, and we can't move to a place of progress on the issue of civil rights without acknowledging that dual responsibility as a key factor in how we got here.

Civil rights—the equal treatment of everyone in the building and outside of it—is fundamentally bigger than the blue-red lens we see things through these days.

It is incumbent on all of us to make sure past wrongs are righted.

Furthermore, the emergence of recent stories from current and former staff within the Office of Civil Rights gives us reason to dig deeper into your leadership and similar actions and patterns from USDA in the past.

To do that, USDA must continue to build on the framework designed by the Obama Administration, under then-Secretary Vilsack to address Department-wide, systemic discrimination.

That is the only way USDA can begin to make real and fundamental changes in its approach to ensuring fair and equal treatment of minorities, women, and protected-classes both internal and external to the Department.

We've seen the Department pay millions in settlements to black farmers and employees as part of class-action suits. And, while this represents a much-needed closing of a chapter, it is one chapter in a saga of wrongdoings.

It does nothing to address the root cause of the disease.

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However, what we do know from the information you shared with my office, is there have been significant declines in the number of employees in the Office of Civil Rights from Fiscal Year 2016 to Fiscal Year 2019.

There are also inconsistencies in the number of EEO complaints Department-wide. The figures your office shared show out of over 300 complaints filed by employees, across ten agencies in Fiscal Year 2019, there were only two findings of wrongdoing.

Given USDA's very recent history, how is this possible?

The lack of findings raises serious questions about the EEO process within your office. Even more troubling is your reported history of a lack of EEO findings at your previous places of employment.

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That's the job I was sent here to do, and I intend to do it.

The CHAIR. Ranking Member Johnson, you are recognized for your opening statement.

**OPENING STATEMENT OF HON. DUSTY JOHNSON, A
REPRESENTATIVE IN CONGRESS FROM SOUTH DAKOTA**

Mr. JOHNSON. Thank you, Madam Chair, and welcome, Ms. Earp. Thank you for taking the time to discuss with us this important work. We can all agree it is really important work that your office, the Office of the Assistant Secretary for Civil Rights, or OASCR, is doing.

I want to first recognize your service to this country. We don't often do that enough in this town, but thank you. You have dedicated yourself to the American people, and to the agencies that serve them and need to serve them fairly, for decades. You have been both the Chair and the Vice Chair of the Equal Employment Opportunity Commission. You have had to work through a variety of circumstances in your current job and past ones that I am sure at times brought you joy in being able to help people, and at different times has provided lots of personal reflection. I can't imagine your job currently or those in the past have been very easy.

OASCR provides overall leadership, coordination, and direction for USDA's civil rights programs, including matters related to program delivery, compliance, and equal opportunity. Its mission is to provide leadership and direction for the fair and equitable treatment of all USDA customers and employees. As the Chair said, "those inside the building and out," while ensuring the delivery of quality programs and the enforcement of civil rights.

You, Ms. Earp, are at the helm of one of the most important divisions of USDA. As you and I have talked in the past, you have educated me to the extent which your team manages the complaint processes, enforces compliance, conducts trainings, provides technical assistance, and drafts impact analyses. That makes it clear to me that yours is certainly not a division without work, lots and lots of important work.

Your testimony today, I suspect, will highlight your commitment to civil rights. I know your written testimony has done so. Including building strategic partnerships, accountability, and prevention.

It is evident by the reports I see from the Department that progress is being made. Not to say that the job is done, but progress is being made, and I hope that today's hearing permits you to discuss accomplishments and where you see the division going in 2020 and beyond.

Again, I just want to thank you for your service. I want to thank you for being here, and I look forward to today's discussion.

The CHAIR. Mr. Conaway, would you like to make an opening statement?

**OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A
REPRESENTATIVE IN CONGRESS FROM TEXAS**

Mr. CONAWAY. Yes, ma'am. Thank you very much.

I join my colleagues in welcoming the Deputy Assistant Secretary of Civil Rights, Ms. Naomi Earp, here today. My notes say to brag on your decades-long service to our Federal Government and our nation. I probably shouldn't use the words *decades long*, because I am not making reference to anything that might get me in trouble.

But more importantly, Ms. Earp, your personal story is inspiring on every single level. No matter where you come from in this na-

tion, where you started, knowing your story, knowing your success, knowing your path inspires all of us. Throughout your work you have pushed the issues of affirmative action, equal opportunity, diversity, and inclusion forward to our nation's benefit, and so thank you for that.

I am glad you are back at USDA, because there is work to be done, and to make certain that no customer or employee is treated unfairly or inequitably. None of us would stand for that if it happened to us individually, and we shouldn't stand for it happening to somebody else, and you are at the pointy end of the sword at USDA to make sure that folks are treated fairly and equitably.

Thank you for coming here today. I hope we spend our time talking about the progress you have made at the agency and things that are under your direct control.

And again, thank you for your service to our nation, and I am looking forward to your testimony.

And, Madam Chair, thank you for the opportunity to say a few words. Thank you.

The CHAIR. Thank you. The chair requests that other Members submit their opening statements for the record so that the witness may begin her testimony and to ensure that there is ample time for questions.

I would like to welcome our witness, Deputy Assistant Secretary for Civil Rights, Naomi Earp.

Ms. Earp oversees the Office of the Assistant Secretary for Civil Rights at the U.S. Department of Agriculture. She was nominated by the President on January 28, 2019, and is currently awaiting confirmation by the United States Senate.

We will now proceed to hearing your testimony. You will have 5 minutes. When 1 minute is left, the light will turn yellow, signaling it is time for you to begin to close.

Deputy Assistant Secretary Earp, please begin when you are ready.

STATEMENT OF HON. NAOMI C. EARP, DEPUTY ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Ms. EARP. Thank you, Madam Chair. Good afternoon, Madam Chair, Ranking Member Johnson, Members of the Subcommittee.

Thank you for the opportunity to provide an update on the activities and programs of USDA's Office of the Assistant Secretary for Civil Rights, pronounced OASCR.

I was appointed Deputy Assistant Secretary on January 29, 2019, the same day Federal employees returned to work after the shutdown.

On my first day we had to develop a plan for addressing thousands of emails, regular letters, and telephone messages that backlogged during the shutdown. From that day to this one, I have worked to strengthen the Department's emphasis on civil rights, including strategic partnerships, accountability, and proactive prevention of discrimination. In short, we have taken several initiatives, but I acknowledge that more needs to be done.

OASCR's mission is to mitigate and eliminate barriers to equal opportunity and equal access by embedding in my mind civil rights

consciousness into all the hundreds of programs and services delivered by USDA. We do this through outreach, prevention strategies, effective and efficient complaint processing, barrier and impact analysis, but most of all, strong leadership.

I want to highlight USDA's first American Diversity Month, ADM, held last July. The idea was to focus on being one USDA. Several ADM activities are mentioned in my written comments. Today I just want to reference the American Sign Language presentation.

The ASL interpreters were also dancers and performance artists. They use sign language, their bodies, facial expressions, and groans to portray a song. Typically it is just the deaf or hard of hearing employees who need a sign language interpreter to understand, but during this presentation, we all needed the interpreter to fully comprehend what was going on. The performance was especially powerful because it helped to create empathy and connection for USDA employees in an inclusive environment. This is the kind of meaningful experience we hope to provide as ADM becomes an annual awareness program.

A few other successes in my time with USDA include reducing program complaint processing time from 595 days to 420; elevating the EEO program from 61 percent compliance to 80 percent compliance; we have held three personal meet-and-greet accountability sessions with State Directors in Oklahoma, Georgia, and Alabama; we followed up Oklahoma with an onsite review; we reinstated report filings, specifically No FEAR and the Farm Bill Annual Report to create better transparency for Congress; we performed the Civil Rights Impact Analysis or provided technical assistance in 199 mission activities including reorganizations, advisory committees, and regulations.

Finally, I would like to say a word about my staff. OASCR's plate is full of challenging but critical work. My staff's commitment to USDA employees and customers is seen in our improved performance. I thank them for the work that they do and the way they stretch to meet challenges. I come to USDA with a sense of urgency about what needs to be done, and I come fully committed to the equal opportunity and civil rights of every employee and every customer that USDA serves.

Again, Madam Chair, my thanks to you, Ranking Member Johnson, and Members of the Subcommittee for this very important hearing.

I look forward to answering your questions.

[The prepared statement of Ms. Earp follows:]

PREPARED STATEMENT OF HON. NAOMI C. EARP, DEPUTY ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Madam Chair, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to provide you an update on the activities and programs of the United States Department of Agriculture's Office of Civil Rights. It is an honor to sit before you today.

Almost 1 year has gone by since I shared with Congress my commitment to advance Secretary Perdue's vision for USDA to "Do Right and Feed Everyone." My role at the Office of Civil Rights is to expand on this vision by ensuring USDA is a department that does right by all people, at all times, and in all locations.

Since being appointed as Deputy Assistant Secretary of Agriculture, I have worked to enhance the Department's emphasis on civil rights including strategic

partnerships across missions, accountability, and prevention. During my short time here, I have already undertaken several initiatives and set many more in motion that are designed to further weave civil rights into the fabric of the department's activities.

The mission of the Office of the Assistant Secretary for Civil Rights (OASCR) is to mitigate and eliminate barriers to equal opportunity and equal access by implementing outreach and prevention programs, processing civil rights complaints of discrimination from employees and customers, and advising other mission areas on policies that may have a disparate impact on certain groups. My office serves a leadership role on civil rights at the Department, ensuring a OneUSDA approach to managing civil rights programs throughout the USDA's mission areas and subcomponent agencies.

Educating and highlighting civil rights topics to all USDA employees is critical. This summer, I developed and implemented USDA's first American Diversity Month. This was an innovative approach highlighting the intersection between civil rights and the agricultural mission of the Department. We held programs illustrating effective methods for conducting outreach at the State Director-level, Native American Influences on American Agriculture, Women in Fire, a mentoring event, and a student intern symposium. These efforts were well received by staff and we look forward to enhancing their impact again next year.

The Office of Civil Rights also leads USDA's consideration of employee civil rights complaints. Less than 1 year ago today, it took an average of 595 days to investigate a claim. This prolonged justice and resolution created uncertainty for our customers and employees. Since coming to USDA, I have reduced average investigations to an average of 420 days. While our team has worked hard to achieve this 30% reduction in processing time, clearly there is more to be done and I am committed to achieving more moving forward. I am working with the Office of the Chief Information Officer to improve our complaint management system that will allow us to be more efficient and continue to improve performance.

Further, I have also engaged and advised USDA State Directors in complaint resolution and compliance and outreach to improve customer service and equal access to farm programs. I completed engagements in Alabama, Oklahoma, and Georgia that resulted in State Director commitment to strengthening both of these areas.

Additionally, OASCR devotes significant time to conducting civil rights impact analysis (CRIA). Congress has affirmed the importance of this work in the 2018 Farm Bill. The CRIA process is a useful tool to understanding, and when necessary, mitigating impact of the organization's proposed or planned activities. I am hopeful this process will enhance CRIA's usefulness as a tool in each Mission's work.

Another area of work to highlight, is our strengthened partnerships with Mission Areas through the establishment of the Mission Area Liaison Office. Thus far, the establishment of the Mission Area Liaison Office has led to productive collaboration across our subcomponent organizations and resulted in streamlined efforts.

For example, the new strategic model has allowed me to work closely and regularly with the Forest Service to address harassment allegations in the workplace. The Forest Service Office of Work Environment and Performance is coordinating efforts, instilling best practices for prevention and employee support, and investigating work environment claims. Employees are being held accountable for their actions through removals, demotions, suspensions and other employee actions. In prevention efforts, the Forest Service has added employee training, banned alcohol in agency-owned employee quarters, and has added additional safeguards to the hiring process. OASCR will continue to work with Forest Service teams to ensure continued progress.

Finally, I would like to say a few words about my staff. Our plate is full of challenging but critical work. Their daily commitment to our employees and our customers is seen by our shared efforts to improve performance and compliance. I look forward to continuing our progress.

My thanks to you Madam Chair, Ranking Member, and Members of the Subcommittee for holding a hearing on a topic of such importance. I look forward to answering your questions.

The CHAIR. Thank you very much.

Now, we may have votes called within the next half an hour. Depending upon how many votes there are, we will make a decision as to whether we should adjourn or whether we are going to be able to come back, because if there are a lot of them we may be gone a long time. We don't want to put you through that.

I would now recognize Ms. Adams, from North Carolina, for 5 minutes.

Ms. ADAMS. Thank you, Chair Fudge and Ranking Member Johnson for hosting today's hearing, and to our witness, Deputy Assistant Secretary for Civil Rights. Ms. Earp, thank you so much for being here.

I am very invested in the work of the Civil Rights Office at USDA, and deeply concerned with the state of black farmers across our country. Black farmers have lost 80 percent of their farmland over the last century and dropped from 14 percent to less than two percent of farmers. And while the number of black farmers increased slightly in the latest Census of Agriculture, black farm ownership is declining faster for black farmers than for other farmers.

The work of your office is vital to ensuring that these devastating trends and the discrimination that has caused them is addressed.

Ms. Earp, North Carolina is the third largest poultry producing state in the U.S. with more than 3,000 poultry farms, and in a state where the population is 22 percent black, only 54 of those farms have an African American as its principle producer. That is only 1.8 percent.

And my state is doing better than others. Nationally, African Americans make up only one percent of poultry producers. I have heard concerns in other parts of the country regarding black farmers being discriminated against through livestock contract grower relationships, and I want to be sure that those concerns are being taken seriously.

My question is, what work have you and your office done to look into this issue, and when can we expect to see a farmer fair practice final rule released?

Ms. EARP. Thank you for the question.

As has been stated, the Office of Civil Rights has no direct responsibility over any of the mission areas, especially not those that give loans or those that are involved with direct farming. What our responsibility is, is outreach to the community and work with employees and management to ensure that civil rights is a part of decisions made.

I know that there is litigation currently involving chicken farms and whether or not there is discrimination in the way contract decisions are made, so I don't know that I can talk specifically about that. But what I can say is that we partner every day with FSA to make sure that small and under-resourced farmers have access.

We spend time in outreach. I personally am reaching out to State Directors because small farmers tell me that the biggest barrier to them is what happens at the local level. We are putting strategies in place to try to address exactly what goes on in the field.

Ms. ADAMS. Okay. So you don't have any connection at all in terms of the farmer fair practice rule? Your office doesn't do anything with that? Is that what you are saying?

Ms. EARP. Our office adjudicates the 1964 Civil Rights Act.

Ms. ADAMS. Okay. So let me just stop you for a moment and ask. Are you able to get for me or this Committee the rule and when it is going to be released? Can we get a copy of that? Are you able to access that?

Ms. EARP. Yes, ma'am, I would be happy to.

Ms. ADAMS. If you would, okay, thank you. So, let me ask you. Recently, records were obtained through an FOIA request which show that USDA has foreclosed on black-owned farms at a higher rate than other racial groups. Our farmers, black farmers, make up less than three percent of USDA direct loan recipients. They make up more than 13 percent of farms that were foreclosed.

Can you speak to how your office is working to help address this disparity and to increase fair lending practices for these farmers?

Ms. EARP. When we have been notified that a farmer is in danger of acceleration or foreclosure, we have immediately reached out to the Civil Rights Office at FSA.

Recently, I met with the Deputy Secretary of USDA to talk about trends that we see with foreclosures. I have a follow-up meeting that will be scheduled sometime in the next few weeks to talk about what USDA may be able to do to stem the what appears to be rising number of foreclosures.

Ms. ADAMS. You don't have any real ideas about how you might help with that? Are you all still having discussions?

Ms. EARP. If a farmer believes that the foreclosure is discriminatory and they file a complaint with the Office of Civil Rights, the first thing that we would do is get that foreclosure to be held in abeyance while we process the complaint.

Ms. ADAMS. Thank you very much. I am out of time.

The CHAIR. Thank you very much.

The Chair of the full Committee has joined us. Would you like to make a comment? If not, I would recognize the Ranking Member, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. I would defer my time to one of my colleagues. I will pick it up toward the end, if that is okay, Madam Chair?

Mr. BACON. Thank you, Madam Chair. Thank you, Ranking Member.

I want to second Mr. Conaway's comments, Mrs. Earp, on your extraordinary career. You were hired as a GS-9, you have been climbing the ladder and promoted to the very top, so we appreciate you being here and we appreciate your leadership.

Ms. Earp, the Department of Agriculture is a complex agency, we get that. There are over 300 programs, 110,000 employees. As Mr. Johnson noted in his opening comments, and you also touched on it, there is a downward trend in complaints resulting in less than 1/2 of 1 percent of employees at the agency filing complaints, and we hope this trend continues. And you noted yourself that you are not satisfied with that. You want to get even better, and we appreciate that attitude and that spirit.

Can you discuss how you work to improve and increase collaboration among divisions, programs, employees, and customers? All these different organizations, is it hard to weave them together with what you are working on. How do you do that?

Ms. EARP. The main thing we have been working on in the 9 months that I have been there is to operationalize exactly what *One USDA* means. We spend considerable time with the mission area civil rights directors. We also spend time in program areas.

The fact is, the complexity of USDA means that we can't just come to the table with civil rights experience. We need to under-

stand how loans are put together and what makes for a solid financial plan *versus* one that does not.

From an operational level, I am working to get civil rights directors to see a picture larger than their mission area. As the Chair has noted, civil rights work is critically important, so it can't be done just based on loans or processing chickens. It has to be as big as the people whose shoulders we stand on and the work that has been done leading us to this point. Collaboration is essential to partnerships. Civil rights can do nothing without the active partnership of mission areas.

Mr. BACON. I can associate and relate to what you are saying. I was 30 years in the Air Force. We have a very diverse command. We have had to do the same things and build this program and every organization, many of them so diverse, 20 different missions, and it takes a different outlook in each one to get it right.

A follow up: Your testimony highlights the enactment of the USDA's first American Diversity Month. Can you expand upon your written comments as to its success and your plans for 2020?

Ms. EARP. American Diversity Month is based on the idea of One USDA. It is also based on preventive steps being taken. Last summer's program included not just the reasonable accommodation with sign language interpretation, but there was a session on mentoring. There was a session on how State Directors, specifically in FSA, can outreach to communities that have been under-served previously.

The State Director that we brought to town changed his outreach numbers, he is brand new, from three the prior year to 90 this year, reaching out to Native American and African American communities.

We also did a presentation on just building one single philosophy around civil rights. We hope to institutionalize American Diversity Month and make it an annual program, substantive seminars the entire way.

Mr. BACON. Thank you, Mrs. Earp, or Ms. Earp. I appreciate your input. I echo, too, your comments on mentoring. We found that with promotion disparity rates in the Air Force, mentorship was the key to try to close that gap.

With that I yield back and I thank you for your time and your expertise.

The CHAIR. Thank you. They have called votes, but we do have time to hear from Mrs. Hayes of Connecticut. We will then take a recess. We have two votes, so it shouldn't be too long.

Mrs. Hayes, you are recognized for 5 minutes.

Mrs. HAYES. Thank you. Hello, Deputy Assistant Secretary. First, I would like to thank you for appearing before our Committee today.

According to your Department, the average age of all American farmers is 58 years old. To ensure the future success of the agriculture industry it is vital that we begin infusing the pipeline with new and young farmers, giving them the tools that they need to succeed.

In my State of Connecticut, we have a program called the UConn Extension Program, and it is working with the Connecticut Department of Agriculture and the Connecticut Farmland Trust to pro-

vide resources to new farmers, like education, access to farmland, and ensure that their future agricultural workforce is set up for success.

Just this week my office joined with the Housatonic Valley Chapter of the Future Farmers of America Club to honor young people who were already excelling in the field of agriculture, specifically women. The USDA should be doing all they can to support programs such as these.

What role do you believe the Office of Civil Rights has in ensuring that programs administered by the USDA provide outreach to communities historically underrepresented in the agricultural industry, like young people, veterans, urban communities, women, minority communities, or any underrepresented group you can think of?

Ms. EARP. Thank you for the question. I do believe that USDA is obligated and committed to have outreach programs that reach into the demographics that you mentioned.

One thing that I would like to note about the older farmers, especially African American and under-resourced farmers, I was recently introduced to the Chairman of a group called The Black Growers' Council. The President is 40-ish, college educated. The group that he chairs, all African American farmers from Texas to Virginia, farm 500 acres to 15,000 acres, all African American.

I think that so much of the emphasis has been put on under-resourced farmers, that perhaps we missed the opportunity to have dual outreach programs. This Black Growers' Council, they don't borrow from USDA. They use USDA for technical assistance. I think that we need to, given the youth and their investment in technology, that they too are the future of farming.

Last summer I met with MANRRS (Minorities in Agriculture, Natural Resources and Related Sciences). I have an intern. MANRRS is the African American equivalent of FHA.

Mrs. HAYES. Yes.

Ms. EARP. I have a current intern, Doctoral student, who is working remotely. I agree that there is much that we can do in the way of outreach to bring in these groups that have been underrepresented, but to also start looking at them with a slightly different lens.

I am preparing to reach out to minority producers and growers that are one step economically above what we normally describe as under-resourced.

Mrs. HAYES. In that same vein, I know that under the Obama Administration, the USDA implemented a range of programs that were meant to address longstanding problems both internally and with programmatic discrimination. These reforms included development of intern-to-career programs, partnerships with land-grant universities, and minority-serving institutions. Can you tell me if your office has done anything under your leadership to continue to expand those internship programs or programs like those?

Ms. EARP. We have worked with the Office of Public Partnership and Engagement for interns, specifically from HBCUs, from organizations like MANRRS that I mentioned, and Hispanic-serving institutions. We are working strategically to increase the number of

young people that are interested in agriculture, and looking for opportunities including the summer interns that I mentioned.

Mrs. HAYES. Thank you. And just for my own understanding, the program that you are referring to is——

Ms. EARP. MANRRS?

Mrs. HAYES. Yes.

Ms. EARP. MANRRS is Minority, Agriculture—I will get you——

Mrs. HAYES. I could—would you?

Ms. EARP. Yes.

Mrs. HAYES. I would appreciate just having the information for myself.

Ms. EARP. Yes, I will——

Mrs. HAYES. Thank you. Jahana Hayes from Connecticut.

Thank you so much. That is all I have. I yield back.

The CHAIR. Thank you. The Committee stands in recess to reconvene immediately following the conclusion of this vote series. Only two votes, so it should be fairly quick.

Thank you very much.

[Recess.]

The CHAIR. The Ranking Member is on his way, and I understand that Mr. Davis is as well.

Since it really was going to be Mr. Johnson, I will ask my questions at this time.

First, let me just say that I have in front of me a personal statement from a Ms. Shawn S. McGruder that I would like to enter into the record without objection. It is her personal statement as to what she experienced as a member of your staff.

[The information appears at the conclusion of the hearing:]

The CHAIR. Just a couple of questions. One, is I was reviewing your hearing before the Senate Committee for your confirmation, and I just want to be clear. Did you say that sexual harassment was silliness?

Ms. EARP. I want to be clear. I absolutely did not, and Senator Stabenow indicated during that hearing that she understood what I meant. I was simply trying to say that workplace behavior has a continuum. Some of it is incredibly, incredibly serious and some of it is serious, but can be addressed with, “knock it off” or “stop.” I want to be clear also and lay to rest, I do not, have never considered sexual harassment to be silly.

The CHAIR. Okay. I just want to be clear, because that is what the record says.

Who did you bring with you today from your staff?

Ms. EARP. I brought my Chief of Staff, Lorena McElwain and representatives from our Congressional Legislative Office. Do you want them introduced?

The CHAIR. Show me who you are?

Yes. Okay, welcome.

To the response of, it was my colleague from Connecticut, you talked about looking at farmers—thank you, Mr. Davis—looking at minority farmers from a different lens.

All of us represent different types of people. I represent very, very wealthy people and very, very poor people, and those in the middle. I find that most of the time that I spend is on those who have the most needs, which are the very poor or the ones in be-

tween, and spend a lot less time on those who don't need as much help.

Do you find that to be the case as well?

Ms. EARP. I find that I spend the majority of my time with under-resourced farmers, and unfortunately it is in the process of addressing their complaints.

The CHAIR. Okay. Since the beginning of your role, and I am just going to be very honest, there are many of us who believe that the Secretary appointed you after your confirmation hearing just in an effort to really circumvent what the Senate was going to do, so certainly some of us have some concern.

But let me just ask you, what steps have you taken to continue to move the ball forward on how USDA addresses civil rights? We know there is a history with this organization before you got there. There has been a recorded history, not a history that anyone has even decided was anything but what it is, a history of discrimination. What have you done to try to ease that or to try to make it better?

Ms. EARP. Let me just say I grew up in Newport News, Virginia. I know exactly what segregation and discrimination looks like. I started out as a social worker and went to law school because I believed that I could make a greater impact for my people, for my community, through the law rather than through social work.

In terms of what I have done in the last 9 months, which is just a beginning, is establish three basic priorities: farm programs, retaliation, and sexual harassment. I thought that I would be able to come in and immediately start working on farm programs, but I found some deficiencies such as: reports of discrimination that were poorly done, an attempt by staff to do civil rights impact analysis without fully understanding the difference between disproportionate impact, adverse impact, and the need for baseline data before you can do either.

There is a lot of work that needs to be done in OASCR. Every Assistant Secretary, Deputy Assistant Secretary, comes with their own priorities. My predecessor had his, but it left a lot of house-keeping things to do.

The CHAIR. I will come back in my closing remarks to a couple of other things.

We have been joined by the Ranking Member, Mr. Johnson. You are recognized for 5 minutes.

Mr. JOHNSON. I defer to the gentleman from Illinois, if it is all right, if you are ready to go, sir?

The CHAIR. That is fine.

Mr. DAVIS. Sure. Thank you, Madam Chair, and Ranking Member. And Ms. Earp, thank you, Madam Secretary, for being here.

Your testimony states that the mission of the Office of Assistant Secretary for Civil Rights is to mitigate and eliminate barriers to equal opportunity and equal access by implementing outreach and prevention programs, processing civil rights complaints of discrimination from employees and customers, and advising other mission areas on policies that may have an unequal impact on certain groups.

As it relates to outreach and advocacy, I want to drill it down a little bit. The Office of Advocacy and Outreach has four main

principles: improving the viability and profitability of small and beginning farmers and ranchers, improving access to USDA programs for historically under-served communities, improving agricultural opportunities for farmworkers, and closing the professional achievement gap by providing opportunities to talented and diverse young people to support the agricultural industry in the 21st century.

My question is, since your start with this Administration, what have you done to enforce the principles of the Office of Advocacy and Outreach?

Ms. EARP. May I start by saying the Office of Advocacy and Outreach, *per se*, no longer exists. It has evolved into the Office of Public Partnerships and Engagement, OPPE.

Mr. DAVIS. So, let me rephrase that. Since your start with this Administration, what have you done to enforce the principles of OPPE?

Ms. EARP. We worked with OPPE very closely on two of their four outreach summits in 2019, Fiscal Year 2019. We plan to have a similar collaboration with them in 2020, and we plan to use OPPE's focus on prosperity to address some of the fundamental issues with under-resourced farmers regarding financial literacy.

Mr. DAVIS. Okay. The 2018 Farm Bill made many positive strides relating to the mission of OPPE, including bolstering the Beginning Farmer and Rancher Development Program by specifically extending eligibility to our veterans and connecting them with easy access to information, training, education, apprenticeships, and hopefully ultimately good careers in agriculture.

Building on these successes, are there other ways in which we can work legislatively, and again, on a bipartisan basis, to engage with new farmers and ranchers in a way that furthers the work that OPPE does?

Ms. EARP. One of the things that my colleague from OPPE would agree to, it would help his office and OASCR, we need better data. USDA really doesn't have data on veterans. We have to crosswalk data for who is an under-resourced farmer or rancher. Sometimes the terminology that the farm bill uses, especially for data collection, doesn't quite track with what we do day to day or even the way the data is collected. Usually the data is collected by race, sex, national origin, those basic demographics.

Mr. DAVIS. Does NASS collect any data?

Ms. EARP. NASS collects a lot of data.

Mr. DAVIS. On these particular issues?

Ms. EARP. NASS can crosswalk under-resourced farmers with race, ethnicity. I am not sure about whether or not they collect data on veterans. That is such a new demographic and constituency for USDA.

Mr. DAVIS. Okay. Well, I would be happy to, if you have suggestions of how we can work better with NASS and other data collection agencies, and maybe cross-referencing to other Federal agencies.

Ms. EARP. Yes, sir.

Mr. DAVIS. If they have that data.

Ms. EARP. We would be happy to work with your staff. I think better data will allow us to evaluate and measure progress more effectively.

Mr. DAVIS. Oh, I completely agree, and you know, and that is something, when we sit here in this room and we can work together on bipartisan issues, and, like the farm bill, we have goals in mind, and a lot of times we don't take into consideration the implementation problems. Sometimes I would argue the implementation problems are caused purposefully by multiple Administrations of both parties, but in the end our job is oversight.

And you do not get much more bipartisan in this Committee than holding USDA accountable for what we all helped write together. If there are things we can do to improve the ability to get the resources and the dollars to the under-served areas, to our under-served minority communities, to our veterans, to our beginning farmer and rancher program that I want to see explode with those who are under-served to be able to get those funds and begin a career in agriculture, so help us help you.

I yield back.

Ms. EARP. Thank you.

The CHAIR. Mr. Panetta, you are recognized for 5 minutes.

Mr. PANETTA. Great. Thank you, Madam Chair. I appreciate this opportunity. And thank you, Ms. Earp, for what you are doing and what you have been doing.

I want to kind of direct you to an area that we in California have been concerned with, and that is dealing with the USDA's proposed rules that would change SNAP eligibility that happened earlier this year.

It is estimated that those changes, those proposals, will obviously negatively impact over a million people, and I can tell you a lot more people around the Central Coast of California as well, unfortunately, especially Hispanic families that call the Central Coast their home and are families that have come to work in our number one industry in agriculture.

I was so concerned that I led, this year, a letter to the USDA and the Secretary, from the California Members, asking about the proposal, and the response that I got was sort of a, we believe this rule ensures that those who need benefits are receiving benefits.

Now, with those rules, though, it included the civil rights impact analysis, which I am sure you are aware of, and each of those analyses found that the proposed rule will disparately affect certain groups, including minorities. And so I am obviously concerned for my Hispanic communities there on the Central Coast, my constituents, in that these proposals are not just kicking people off the program, they are scaring people away from participating in SNAP, including legal permanent residents. And these are individuals who have lived in this country legally for at 5 years before becoming eligible for the program.

If I could, do you think you could at least outline your office's role in SNAP rulemaking, particularly the rule to eliminate broad-based categorical eligibility?

Ms. EARP. The Office of the Assistant Secretary for Civil Rights has no role in rulemaking.

Mr. PANETTA. But are you familiar with this type of proposal that was done by the USDA at all in regards to SNAP?

Ms. EARP. I am familiar but cannot speak to the details.

Mr. PANETTA. Okay. All right. In regards to the civil rights impact analysis that was attached to this rulemaking, are you familiar with that at all?

Ms. EARP. There are normally two.

Mr. PANETTA. Okay. Can you explain that, please, and how that works?

Ms. EARP. The initial review is conducted by the mission area, in this case Food and Nutrition Service, and then typically OASCR would review that.

Mr. PANETTA. Okay.

Ms. EARP. I will note, however, that the civil rights impact analysis is a tool that just looks at the facts, the data. It is neutral. It does not signal a go or stay to the agency. We advise them on what we find and then the agency, in this case Food and Nutrition Service, makes a decision.

Mr. PANETTA. Understood. Understood. Well, I appreciate your role in that.

Moving on, in regards to the relocation, I am sure this has been brought up, the relocation of the Economic Research Service, ERS, and the National Institute of Food and Agriculture, NIFA, to Kansas City, did you have any concerns about the impact of that relocation on the timely dispersal of resources and information to minority and beginning farmers?

Ms. EARP. OASCR was consulting with NIFA from the moment we first learned that a relocation was possible. We worked very closely with them. I can't say that there were specific reasons.

Mr. PANETTA. Okay. Nothing in particular stood out in regards to that move in regards to your role as Deputy Secretary?

Ms. EARP. Our role focused primarily on employees and the impact it would have on the relocation of employees.

Mr. PANETTA. Understood. Understood. Okay, thank you.

Are you familiar with the Market Facilitation Program?

Ms. EARP. Only that we have one.

Mr. PANETTA. Okay. All right. Well, thank you very much for being here, and I appreciate your participation, not only in this hearing, but also your service. Thank you very much, ma'am.

I yield back.

The CHAIR. Mr. Hagedorn, you are recognized for 5 minutes.

Mr. HAGEDORN. Madam Chair, thank you for recognizing me, and Ranking Member, Johnson, it is good to be here.

Deputy Assistant Secretary, a pleasure meeting you. Thanks for your work and your devotion and the way that you have taken on the job in trying to continue some of the progress that was made in the previous Administration and continue to go through here with the Trump Administration on some of these key issues.

Just for the record, I will give you the other side on the SNAP rules so you can take this back to the Agriculture Department. I think that the work that the Secretary and others are doing in the food stamp program to tighten up some of the rules to make sure that the benefits only go to those who are deserving, and that we promote the concept of work for welfare, are good, because the best thing we can do, the most compassionate thing we can do, is push people to be self-sufficient and to work. And so that is where I am on those issues, and I support. You can take that back.

The Forest Service, which a lot of people don't even realize is part of the Agriculture Department, you said in your opening statement that there is some strategic models, other things that you are doing in order to move things forward and have a better rapport there. Can you maybe dive into that a little bit and explain to us exactly what you are up to?

Ms. EARP. Yes, sir. In terms of sexual harassment, I believe that Forest Service serves as a model. They have had some issues. They are a very "get it right, get it done" organization and they are doing that.

From OASCR's perspective, there are two things they are doing that are cutting-edge. One is a victim-centered approach, so they are very focused on the trauma that the victim goes through and they have put multiple avenues in place for victims to take their concern. The other cutting-edge strategy that they are employing is called Bystander Intervention Training. That supposes that the responsibility to stop, prevent sexual harassment is global. It is everyone who happens to be in the workplace. It is almost as ubiquitous as security. If you see something, see [sic] something, but bystanders have to be trained how to intervene, what to say. And both of those initiatives sanctioned by the Equal Employment Opportunity Commission are best practices.

Mr. HAGEDORN. Sure. That kind of awareness, you are trying to prevent it on the front-end and so you don't have to deal with complaints. But a couple of years ago there were quite a few cases still pending, over 2,000. A lot of those cases have been resolved one way or another. Is that where we are and what do you attribute the big reduction to?

Ms. EARP. Forest Service has been very successful in reducing the number of active complaints, and one of the reasons is again, they have multiple venues. A complainant can come to OASCR, which is a formal EEO complaint. It is laborious and it is not very efficient. A Forest Service person can also go to the Anti-Harassment Center which is very quick. They can also have their trauma addressed specifically in trauma-focused resources.

Mr. HAGEDORN. And so when you resolve these complaints and there are certain actions taken against people that don't do the right thing, some of it could be demotions, reprimands, I guess on occasion you could try to fire an employee. That is a pretty difficult process. I used to manage people in the Federal Government myself, and maybe we need to open up some of those rules in order to make that better when people make mistakes, but, so how do you determine exactly what action to take? Are there certain regulations or is it up to you and a panel, or how does that work?

Ms. EARP. Well, again, Forest Service is setting a model for the rest of the Department. They have held more managers and supervisors accountable as a result of the sexual harassment issues. It has raised other kinds of harassment: bullying, racial harassment.

To discipline a Federal employee, as you know, is a very focused, methodical process. Generally we want to make sure that the punishment fits the offense and that it is applied in a standard, even-handed way. Most of the time OPM, the Office of Personnel Management, provides guidance on the type of offense and the level of appropriate punishment.

Mr. HAGEDORN. Very good. Thank you for your answers. Madam Chair, I yield back.

The CHAIR. Thank you.

Mr. JOHNSON, you are recognized for 5 minutes.

Mr. JOHNSON. Thank you, ma'am.

Thank for being here again, Ms. Earp. And the Equal Employment Opportunity data that has been filed pursuant to USDA's No FEAR Act looks promising. I think the data I have seen shows a downward trend since 2017 or so. The Department went from 561 complaints in 2017 to 436, now that is year-to-date so that number will likely go up, but in 2019.

I am asking you to guess a little bit here, but what do you attribute that decline, which may end up being ten or 15 percent this year, to?

Ms. EARP. I think the decline is primarily because of training at multiple levels across USDA. It is also alternative dispute resolution, providing other forums for employees to take their concerns. It is holding managers and supervisors in particular accountable. When managers understand that they are responsible for the tone in their workplaces, things start to happen.

And then ultimately because Forest Service is such a large portion of USDA, when they reduce their complaints, it has a ripple effect across the Department.

Mr. JOHNSON. Is that the case for the Forest Service numbers? And of course, Mr. Hagedorn asked about that. As those numbers have come down, that makes up a bulk of the overall USDA reduction it sounds like?

Ms. EARP. Yes.

Mr. JOHNSON. Okay, very good.

Now, it seems like in any given year there are a dozen or more repeat filers. What causes the repeat filing? I mean, is it dissatisfaction with the process, they are not sure they have been heard, is it dissatisfaction with the outcome? Kind of walk me through what might cause that frustration?

Ms. EARP. We believe frequent filers file for all the reasons that you mentioned. They also often file because they can. In the Federal system an employee has an absolute right to complain. There is no threshold requirement. They don't have to think that their complaint is serious.

Finally, I think that some frequent filers use EEO complaints to punish managers and supervisors. It is a pretty effective tool.

Mr. JOHNSON. You talked just a minute ago about managers being a critically important part of changing this culture and driving down complaints, and more importantly than driving down complaints, driving down problems, right? I mean, we want people to be treated fairly and equally in this workplace. When you all onboard people onto USDA, I mean, is there sufficient training and education, number one, about people's rights, but also about the responsibilities, whether it is managers or whether it is line-level staff to if they see something, to say something?

Ms. EARP. I think that we are just beginning to make the shift beyond the basic training of what your roles and responsibilities are, what your rights are. But let me just share an anecdote about EEO complaints.

I reviewed a report of investigation that was insufficient. It was remanded back to the Department of Agriculture because it did not contain sufficient facts to make a decision. When I questioned the manager, she said it is the employee's responsibility to satisfy his *prima facie* case. When I disagreed on that, especially when an employee is representing him or herself, it is OASCR's responsibility to layout a roadmap of facts that makes it easy for an Administrative Judge to make a decision, discrimination, no discrimination. When I challenged her on that, she filed an EEO complaint.

Mr. JOHNSON. An EEO complaint against whom?

Ms. EARP. Naming me as the alleged discriminating official.

Mr. JOHNSON. Has that complaint worked its way through the process?

Ms. EARP. It is working its way through the process, and that is fine, because employees have an absolute right to do it.

I merely share it as one example of how the complaint can be used against management, and that is a very difficult thing to train new managers on.

Mr. JOHNSON. Well, in closing I would just say, I mean, I want to thank you for making it clear that this is a global obligation we have, to try to make sure that our workplaces, and frankly our program delivery, are fair. I think we are called to do that, and thank you for your efforts in that regard.

Ms. EARP. Thank you.

Mr. JOHNSON. The Chair has invited me to make a brief closing statement, which I am happy to do. And thank you, Chair Fudge, for calling this together.

Ms. EARP. I need to think at the end of every day or during the course of the day what I am going to tell my sons about my day. It is kind of fun. I mean, it is too bad we are apart, but that is the nature of the life we have chosen. And today I am going to talk to them about your testimony, because you are a remarkable person who has had remarkable service to this country.

And the first time we met, I asked you why you do this, because service to this country as a member of the bureaucracy is not always easy. And you said that you have a passion for fairness, and you seemed almost emotional, and I will be honest with you, ma'am, I was almost emotional with the gravity and the weight and the dignity with which you delivered that answer. And then earlier today you talked about growing up, and you said that you know what discrimination looks like. And if I am being honest with myself and with my sons, of course they never think life is fair because that is the nature of children, but you have certainly battled against, ma'am, forces that they will never have to.

And the fact that you chose those difficult experiences growing up, used that as fuel and as energy and as righteous passion to try to make lives better for others, to find that fairness that you seek and to push down the discrimination that you and that your mother, you so eloquently talked about your mother during your confirmation hearing, to me is, you are the kind of person that my sons should hear about.

Thank you for being here today.

Ms. EARP. Thank you.

The CHAIR. Thank you very much. I would like to make some closing remarks as well. Again, I thank you for being here. Let me just say a few things.

First, I am extremely concerned about the lack of urgency that your Department put forth to provide information that we requested, timely. For me to receive something at 8:40 a.m. this morning either says to me that it was deliberate, that it was disrespectful, or it was incompetent. I am not sure which, but I would like to get the information that we requested and I would like to get it timely, because it is what provides for me a clear picture of what the Department is.

I further asked you the question about who was with you today. Most of the complaints I have received have been from African Americans in the Department. Most of them high-ranking. And as I look, you have no African Americans here with you, and they have historically, I asked her to tell me who was with her. She didn't mention you, so you must not be part of the big team. Historically, African Americans have had high-ranking positions in OASCR, and I see none here today, which just goes to the visual that supports their position that there has been a deliberate attempt to have them removed from their positions. There has been a deliberate attempt to make the environment uncomfortable for them. And so the information I requested can support your position if you just give it to me.

It is just difficult for me to believe that there is no culture of favoritism based upon what I see. But I further find it just incredulous to believe that 300 people from ten departments have filed some kind of a complaint, employees, and only two of them have had merit. It is just almost impossible. It is unheard of. I would like to see that information.

The Office of the Assistant Secretary for Civil Rights is there to enforce the civil rights of people. You might have a lot of really good programs, but your number one job is to enforce the civil rights of protected classes, and there is nothing in what you have said to me today that leads me to believe that that is in fact what your number one priority is.

Now, I am going to just ask. When am I going to get the data that I requested?

Ms. EARP. As soon as possible.

The CHAIR. But we knew there was a hearing today. Could you not at least have been concerned enough to say, "We are working on it and don't have it?" Don't just not give it to me and we show up.

But last, and I am going to say this. We do have often disagreements. I hope that we are not necessarily disagreeable, but we do have disagreements on this Committee.

And to Mr. Hagedorn, let me tell you what they can take back for me, the fact that most people who are on SNAP who can work, do work. You can take that back, too. And the rules that are being promulgated by USDA are punitive and hurt the very people we are here to serve.

And with that, this hearing is adjourned.

[Whereupon, at 3:35 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED STATEMENT BY HON. MARCIA L. FUDGE, A REPRESENTATIVE IN CONGRESS FROM OHIO; ON BEHALF OF SHAWN S. MCGRUDER, J.D.

To: The Honorable Marcia Fudge, Chairman, and Committee Members:

Between September 3, 2017, and May 20, 2019, I was USDA's Senior Executive Service (SES) Executive Director for Civil Rights Enforcement, Office of the Assistant Secretary for Civil Rights (OASCR), where I provided executive leadership to ~75 Federal and contract staff in processing formal EEO and program discrimination complaints. Since January 29, 2019, after an unsuccessful performance before the Senate Agriculture Committee, during which she referenced harassment as "silliness," Naomi Earp has run OASCR from the "Deputy" Assistant Secretary for Civil Rights position. On May 2, 2019, after enduring 3 months of her harassment, for my health and well-being, I tendered my resignation from the most rewarding job of my 28 year Federal career, but several years short of retirement eligibility. On May 20, 2019, I started a new job as a Senior Associate General Counsel in the private-sector.

But, agriculture remains in my blood. I am the product of a marriage between (1) a mother who was the first in her immediate family from Anderson, SC, to attend college (paid for with the earnings of her sharecropper parents and siblings); and (2) a father whose proud McGruder family had amassed over 300 acres of land in rural Hale County, AL, which was no easy feat for Black men in the late 1800s. So, I care earnestly about USDA's civil rights work in agrarian communities. During FY18, I presided over unprecedented case processing times in EEO cases and improved productivity in program cases; and I earned an Outstanding SES Performance Rating, sustained through three levels of review, including the Secretary of Agriculture.

In January 2019, I warmly received Ms. Earp but soon discovered that, though also Black, she harbors a peculiar bias against Black employees. She stereotypically branded Black staff as incompetent, lazy, and shiftless, and she habitually lodged baseless allegations of impropriety against us. Yet, she readily believed any flimsy assertions from a White/Hispanic Chief of Staff who traversed the Department communicating flawed data analysis; and a White/Caucasian GS-15 Budget Director, whom she elevated as an "overseer" of Black SES officials and who mismanaged the reimbursable budget.

Ms. Earp immediately began disparaging, undermining, and targeting OASCR's Black SES staff. Within her first 2 weeks, unbeknownst to us at the time, she requested to move the Associate Assistant Secretary and me from our jobs. On February 21, 2019, for non-merit reasons, Ms. Earp expressed her plans to get rid of my counterpart, the Executive Director for Civil Rights Operations. On February 25, 2019, Ms. Earp voiced intent to hasten the retirement of the Deputy Executive Director for Civil Rights Operations by placing her on an arduous performance plan. On February 28, 2019, also for non-merit reasons, Ms. Earp demonstrated a similar interest in the Associate Assistant Secretary's earlier separation.

In addition to directly opposing many of Ms. Earp's unlawful actions in real-time, on March 14, 2019, I escalated concerns about her abuse to USDA's General Counsel. On March 16, 2019, the Associate Assistant Secretary and I reported our concerns to Senate Agriculture Committee staff. Between March 24 and April 23, 2019, I applied for ~40 Federal and private-sector jobs, one of which I accepted on May 2, 2019. In tendering my resignation, I requested of the Secretary an Exit Interview and an Internal Inquiry into OASCR's hostile work environment during Ms. Earp's tenure. During a subsequent meeting with the General Counsel and Deputy Secretary, I renewed my request for an Internal Inquiry into OASCR and invited them to investigate me as well.

On July 18 and August 5, 2019, I submitted for two interviews with Attorney Rock Rockenbach, whom USDA finally contracted to conduct the Internal Inquiry I had requested in early May. On November 1, 2019, a former colleague advised me that when she recently sought to share new concerns, Mr. Rockenbach said he had just completed his work and already submitted his Report. On equal date, I emailed the Secretary, cc General Counsel, to request a copy of the Report initiated at my request, but received no response.

Meanwhile, OASCR continues struggling under Ms. Earp's malicious rule. Information suggests that in July 2019, she used spurious claims to thwart my former deputy's job opportunity after he had emerged from two successful interviews and three stellar reference checks as the Finalist for a job at NASA. On July 31, 2019, the GS-15 Director of the Employment Investigations Division retired with less than 2 weeks' notice, due to harassment over time she needed to recover after a recent heart attack. On November 1, 2019, that division's GS-14 Team Lead also retired with less than 2 weeks' notice, declining a request even to remain and train

a successor. Over the past week or so, pending another specious inquiry, Ms. Earp arranged the unceremonious moves of the GS-15 Director and GS-14 Team Lead of the Conflict Complaints Division, which handles complaints against Ms. Earp.

I urge the Committee to subpoena copies of all EEO complaints filed by OASCR employees since January 29, 2019, to develop further background about continuing concerns with the OASCR environment.

I urge the Committee to subpoena Rock Rockenbach and the Report he produced concerning OASCR's environment. In so doing, it would also be well to subpoena the witnesses who provided testimony and their underlying interview transcripts.

Finally, I urge this Committee to continue conducting full and open oversight into Naomi Earp's mismanagement of OASCR. Sadly, despite the passage of time, her conduct remains consistent with the behavior that the NAACP previously described. See Attached, *NAACP Federal Sector Task Force Special Report and Critique of Naomi Churchill-Earp* (March 20, 2002). She is creating an unhealthy work environment, emboldening poor performers, discriminatorily favoring White staff, driving talented Black leaders from the organization, and systematically destroying USDA's Civil Rights program.

ATTACHMENT

March 20, 2002

NAACP Federal Sector Task Force

A Special Report and Critique of Naomi Churchill-Earp, Esq.: Nominee for the Position of U.S. Equal Employment Opportunity Commission (EEOC) Commissioner

LEROY W. WARREN, JR., *Chairman*, NAACP Federal Sector Task Force, Washington, D.C.

March 20, 2002

Hon. GEORGE W. BUSH,
President,
United States of America
Washington, D.C.;

Hon. EDWARD M. KENNEDY,
Chairman,
Senate Health, Education, Labor and Pensions Committee
Washington, D.C.;

Hon. JUDD GREG,
Ranking Member,
Senate Health, Education, Labor and Pensions Committee
Washington, D.C.

Subject: Opposition to Naomi Churchill-Earp EEOC Nomination

This report is to provide for your consideration our thoughts, facts, and information, regarding the nomination of Naomi Churchill-Earp for a position of Commissioner, on the U.S. Equal Employment Opportunity Commission (EEOC). The documentation provided herein leads us to recommend that ***she should voluntarily withdraw or her nomination should be involuntarily withdrawn.***

On February 16, 2002, the NAACP National Board of Directors, at its annual meeting, unanimously passed the following resolution, opposing Ms. Churchill-Earp's nomination as an EEOC Commissioner.

"The NAACP Board of Directors officially goes on record as opposing the nomination of Naomi Churchill-Earp as an EEOC Commissioner, based upon what has been described as a track record of actions and activities that are basically in opposition to NAACP policies, goals and objectives."

The NAACP Federal Sector Task Force is concerned about anyone, regardless of race or sex, being nominated to such a critical, high-level civil rights/equal employment opportunity position, who has been intricately and frequently linked to situations involving patterns and practices of disparate treatment against minorities and others within the Federal Government.

This report offers compelling evidence that Naomi Churchill-Earp, based on her previous record, is not **an ideal or the best-qualified candidate** to serve as an EEOC Commissioner.



LEROY W. WARREN, JR., *Chairman*, NAACP Federal Sector Task Force.

Executive Summary

The Federal Sector Task Force has not been able to find valid reasons and/or justifications to support the nomination of Naomi Churchill-Earp as a U.S. Equal Employment Opportunity Commission (EEOC) Commissioner. Based on reports from numerous sources that have contacted us, on Ms. Churchill-Earp's watch and during her stewardship and leadership, the National Institute[s] of Health (NIH) Office of Equal Opportunity (OEO) and other Federal EEO offices that Ms. Churchill-Earp managed including the U.S. Department of Agriculture were all basically characterized as places of discontent, low morale, high senior staff turnover, with allegations of ongoing abuses, favoritism, and basically failed and troubled leadership. Ms. Churchill-Earp's tenure at NIH was from approximately September 1994 to July 2000. According to knowledgeable sources, Ms. Churchill-Earp **has been on some type of detail to the National Institute of Science & Technology (NIST)** since July 2000. Also, according to **reliable** sources at both NIH and NIST, Ms. Churchill-Earp's departure from the NIH was under less than ideal circumstances.

The Task Force is very pained and distraught over the fact that we are arrayed with the forces in opposition to a highly educated Afro-American female who is being considered for this critically important job. However, we must be very clear that the issue is not one of race or sex, but rather questionable commitment to EEO laws and court decisions, as well as, questionable overall fitness, temperament, personal style, and mercurial personal behavior that may prove harmful to the office and its trust. On February 16, 2002, the NAACP National Board of Directors, at its annual meeting, unanimously passed the following resolution, opposing the nomination of Ms. Churchill-Earp as an EEOC Commissioner.

- *“The NAACP Board of Directors officially goes on record as opposing the nomination of Naomi Churchill-Earp as an EEOC Commissioner, based upon what has been described as a track record of actions and activities that are basically in opposition to NAACP policies, goals and objectives.”*

The NAACP is concerned about anyone, regardless of race or sex, being nominated to such a critical high-level civil rights/equal employment opportunity position, who has been intricately linked to situations involving patterns and practices of disparate treatment against minorities and others within the Federal Government. Due to privacy issues and other related factors, the Task Force was unable to determine the exact amount the U.S. taxpayers have paid to settle EEO, disability, and related complaints filed against Ms. Churchill-Earp directly and/or employees under her supervision. However, we do know that any/all monetary settlements paid in the large number of EEO complaints against Ms. Churchill-Earp have been paid by us, the U.S. taxpayers. The Task Force has been provided with **estimated settlement figures which leads us to believe that U.S. taxpayers paid EEO related settlement costs in the \$500,000+ range, plus attorney fees for the plaintiffs, plus the agency in house legal and EEO staff salaries. Presently, there are two EEO complaints before the EEOC, involving allegations of discrimination against Ms. Churchill-Earp. The following is a synopsis of some of the EEO settlements that occurred during Ms. Churchill-Earp's stewardship of the NIH EEO of the OEO) office:**

1. Black female GS-7, an estimated \$25,000 *plus attorney fees*
2. Black female, GS-15 or GS-15, an estimated \$70,000 *plus attorney fees*
3. Black female, GS-13, an estimated \$25,000
4. Black female, GS-12, an estimated \$25,000
5. Black male, GS-13, an estimated \$25,000
6. Black male, GS-13, an estimated \$55,000

7. Hispanic male estimated \$170,000 (\$70,000 before death and **\$100,000 after his death**)
8. White male, GS-13, an estimated \$25,000

The total payment in these known cases was an estimated **\$390,000**, plus attorney fees for the plaintiffs and the NIH and U.S. Department of Justice attorneys. Sources at other agencies have indicated awareness of additional cases.

The following data profiles the variation in salaries within the NIH OEO office during the period FY 1993 to FY 1999, according to official NIH documents submitted via a legal discovery.

- ❖ Hispanic average salaries increased **39.9%** from \$59,099 to \$82,660.
- ❖ Asian average salaries increased **45.6%** from \$31,688 to \$46,142.
- ❖ White average salaries increased **62.3%** from \$45,015 to \$73,044.
- ❖ African American average salaries **decreased** (-32.8%) from \$67,965 to **\$45,696**.

An unofficial Affirmative Action plan for higher-level White males is illegal, but based on the information provided to the Task Force, it was a high priority and standard practice during Ms. Churchill-Earp's tenure at NIH OEO office. *We want to make it very clear that we are **not anti-White male**.* Numerous White males are part of the Task Force, are NAACP members, and are staunch supporters of equal rights for all. However, we are vehemently opposed to any senior level executive who supports the hiring, promotion and advancement of one race of individuals (White males), while allowing harassment and disparate treatment towards another group. This is particularly egregious when the senior level executive holds a civil rights position and has sworn to protect the rights of all employees regardless of their race, sex, national origin, religion, etc.

A Profile of NIH's Adverse Actions

According to official NIH internal data, a total of **224** (**38** in FY 1990, **45** in FY 1995, **91** in FY 2000, and **50** in FY 2001) EEO complaints were filed in the listed fiscal years (FYs). During the four listed FYs, a total of "**one finding of discrimination was made**" and it occurred in FY 2001." It is a well-known fact among the leaders of the Montgomery County, MD, NAACP leadership, based upon complaints received from employees, that there were serious claims and allegations of problems at NIH, especially within the administration of the NIH's OEO office.

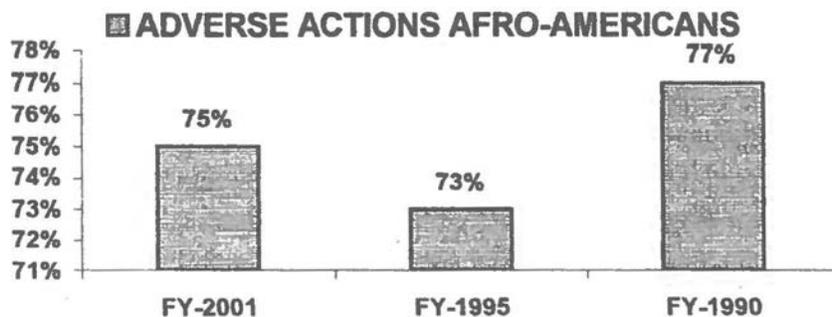
It is absolutely mind-boggling that out of the total of **174** complaints that were filed in FY90, FY95, and FY 2000, that "**ZERO (0) FINDINGS OF DISCRIMINATION WERE MADE** at NIH." *The lack of discrimination findings in and of itself raises some very serious questions as to the effectiveness of the EEO program at NIH.* It is the opinion of many highly qualified and knowledgeable EEO professionals that the total lack of discrimination findings in FY 1995 and FY 2000 should have raised serious questions as to the depth of the EEO problems within NIH.

According to official EEO data viewed by the Task Force, eight (8) African Americans, two (2) Asians, one (1) Hispanic, and one (1) White filed the **38** EEO complaints within NIH during FY 1990 [*NIH management stated that the same data is not available for FYs 1995, 2000, and 2001*].

Adverse Actions at NIH During Recent Years

During FY 2001, a total of 24 adverse actions occurred at NIH, of which 18 or **75%** were African Americans (5 Afro-American females and 13 Afro-American males) although African Americans composed just under 24% of the total NIH employees. Of the 24 adverse actions, 23 resulted in removals, 18 (78%) of which were African Americans (5 Afro-American females and 13 Afro-American males). **This reflects a removal rate that is in excess of 200% higher than the African American population at NIH**, which is under 25% of the total employee.

African-American's Percent of Total Adverse Actions

*Report on Naomi Churchill-Earp, Esq. Nominee for EEOC Commissioner*

The following is a short synopsis of the actions and activities of Naomi Churchill-Earp, a nominee for the position of Commissioner, U.S. Equal Employment Opportunity Commission (EEOC). The information delineated within this document was compiled from a variety of sources including the media, former co-workers/employees, acquaintances, and associates of the nominee.

According to various sources who are current or former subordinates, a serious question exists as to the rationale and justification for the nomination of Ms. Churchill-Earp for a vacant EEOC Commissioner slot. Many sources would like to know who (or what group) is actually sponsoring Ms. Churchill-Earp's nomination for this civil rights/equal employment opportunity position and the actual agenda behind her nomination. Her dismal EEO track record is basically an anathema to the EEOC charter and the spirit and intent of EEO laws and regulations.

Background Information

The purpose of this document is to highlight, profile and offer some compelling documentation, reasons, and rationale to support the NAACP's decision to urge the U.S. Senate to reject the nomination of Naomi Churchill-Earp to serve as a U.S. Equal Employment Opportunity Commission (EEOC) Commissioner.

Ms. Churchill-Earp is a graduate of the Catholic University Law School and earned an undergraduate degree in social work and a master's degree in social studies education. **Our sources indicate that Ms. Churchill-Earp** entered the Federal Government as a GS-9 Civil Rights Specialist at the Economic Development Administration, Department of Commerce, in Chicago. From there, she went to work at the EEOC where she served as a staff assistant to former EEOC Chair, now Supreme Court Justice Clarence Thomas.

According to a September 21, 1987, *Washington Post* article, when Associate U.S. Supreme Court Justice, Clarence Thomas left the EEOC to become a Federal judge, he helped Ms. Churchill-Earp get an SES position at the U.S. Department of Agriculture (USDA) (although she had no record of prior management experience). Ms. Churchill-Earp was appointed as Director of the Office of Civil Rights at the USDA where she served until 1989. According to reliable sources, Ms. Churchill-Earp left USDA due, in large part, to the ongoing tension and confusion caused by her mercurial management style, plus some internal personal problems with her superiors.

After leaving USDA, Ms. Churchill-Earp then became a contractor providing training, EEO investigative services, and other functions for several Federal agencies. According to various sources, Ms. Churchill-Earp later returned to Federal service and worked for the Naval Research Laboratory and the Federal Deposit Insurance Corporation (FDIC) (5 months). In September 1994, Ms. Churchill-Earp became Director of the Office of Equal Opportunity (OEO) at the National Institutes of Health (NIH) with a staff of approximately 30 employees. Ms. Churchill-Earp is currently on the NIH payroll, although she has been detailed to the National Institute of Science and Technology, Department of Commerce since July 2000. According to various sources, the current detail resulted from Ms. Churchill-Earp's abusive management style and her failure to comply with a direct order from one or more high level NIH official to provide suitable reasonable accommodations for two OEO employees. According to knowledgeable sources, both were GS-13, Afro-American males: one suffered from **diabetes** and required insulin shots and some privacy. The other was an **amputee**, who needed the privacy of an office to change his **prosthesis**.

Creating an Affirmative Action Program for Higher Level White Males

Various reports that we have received state that Ms. Churchill-Earp, via her actions, created unneeded and unjustified affirmative action programs for White males, at the expense of Federally protected groups and racial minorities. This unwarranted and illegal practice appears to reflect and showcase a loyalty to the ultra conservative and extreme right-wing elements of the political establishment and American public. Some of Ms. Churchill-Earp's actions and activities are totally inconsistent with U.S. laws and regulations that fair-minded Americans would expect and demand from their government leaders.

A review of the information and interviews with various sources leads the Task Force to conclude that dismantling and nullifying federally mandated EEO programs has been the outcome in most or all Federal agencies where Ms. Churchill-Earp has worked as the senior higher-level EEO executive. A synopsis of some of the programs negatively impacted by Ms. Churchill-Earp's actions include the EEOC's Affirmative Action Planning Process, the Federal Equal Opportunity Recruitment Program, the Hispanic Employment Program, and the Federal Women's Program.

Eight Compelling Reasons Ms. Churchill-Earp Should Not Be Confirmed To Serve As An EEOC Commissioner

The following summary supports the fact that Ms. Churchill-Earp is basically unsuited for confirmation as an EEOC Commissioner.

1. Ms. Churchill-Earp has a history and track record of retaliation, reprisal, and acting in an unprofessional manner against a number of Federal employees.
2. Ms. Churchill-Earp, via her actions, has shown a philosophical predisposition to reward White males while showing *disdain* and contempt for many highly qualified African-American employees.
3. Ms. Churchill-Earp has a history and long-standing track record of dismantling or negatively undermining the effectiveness of Federal EEO programs.
4. Ms. Churchill-Earp, by her actions, has shown disrespect for EEO laws by allowing NIH's OEO to permit mistreatment and intolerance of some employees with disabilities.
5. Ms. Churchill-Earp via her actions and inaction has a history of allowing the creation of a hostile environment for many African-American employees and other racial minorities.
6. Ms. Churchill-Earp, via her actions, inactions, and activities, unofficially allowed the creation of an affirmative action program for White males at the National Institute[s] of Health (NIH).
7. Ms. Churchill-Earp has frequently acted unprofessionally, exhibiting personal traits and values that make her unfit to serve as an EEOC Commissioner.
8. *The U.S. taxpayers have spent hundreds of thousands of dollars in legal fees, compensation, and internal staff salaries to fight and pay for EEO complaints against Ms. Churchill-Earp and or the EEO organization(s) she supervised.*

Examples of Ms. Churchill-Earp's Unacceptable Behavior

The following are some crude and real examples of the unacceptable behavior of Ms. Churchill-Earp as delineated to the Task Force by a number of credible sources.

- *Ms. Churchill-Earp's Reprisals and Retaliations*

One of Churchill-Earp's former staff assistants, an African-American female, provided testimony *against* Ms. Churchill-Earp at a June 2001 EEOC hearing in which Ms. Churchill-Earp was the named responsible official. Over the years the staff assistant sent numerous packages to Ms. Churchill-Earp. After the June 2001 hearing, Ms. Churchill-Earp returned some or possibly all of the returnable gifts the staff assistant gave her. Unbeknownst to the NIH OEO staff, the staff assistant and Ms. Churchill-Earp **had been collage roommates**—a fact revealed at the hearing.

Two of the packages returned to the former staff assistant were of an intimidating nature. On one of the packages, Ms. Churchill-Earp wrote in her distinctive handwriting, a bogus return address: **#1 Betrayal, Forestville, MD** (Forestville being where the staff assistant lives—Ms. Churchill-Earp was believed to be a resident of Damascus, MD, at that time).

The other package contained photographs in which Ms. Churchill-Earp and the staff assistant appeared together, except that Ms. Churchill-Earp was cut out of the pictures. This behavior is unbecoming of a senior Federal manager and a White House nominee.

- *Ms. Churchill-Earp's stated philosophy on the importance of having White males relate important, particularly disdainful, information to one another*

Ms. Churchill Earp directly or indirectly hired and/or approved the hiring of two training consultants at a 1999 retreat to relate a specific philosophy to her staff. The word around the office was that, one trainer, a White male who had trained Ms. Churchill-Earp at the Federal Executive Institute (FEI) engaged the staff in an *Antigone* exercise that demonstrated the importance of having "**messengers who are like the king deliver messages to the king.**" When an OEO staffer asked if the trainer was telling the OEO staff that White males carry messages better to White males, the trainer said **yes**. According to reliable sources, Ms. Churchill-Earp also expressed this or a very similar philosophy to an African-American female OEO staffer in 1995, shortly before Ms. Churchill-Earp attempted to replace that staffer with a White male. **Note:** Using this philosophy, racial minorities are virtually excluded from being involved in higher-level decision-making positions. This thinking in itself should automatically eliminate Ms. Churchill-Earp from consideration as an EEOC Commissioner.

The second retreat consultant, a White female with whom Ms. Churchill-Earp evidently had worked or become acquainted with at/or prior to the retreat, gave the staff basically the same message and stated that if they did not believe it, "**they needed to get another job.**"

- *Ms. Churchill-Earp Actions Effectively Dismantled the NIH EEO Program*

The Montgomery County Maryland NAACP received a number of complaints in the mid to late 1990s regarding the inept and basically inoperative EEO and Diversity program at the NIH. Most of the complaints revolved around the issue of overall management of the EEO program. Many of these claims and allegations involved an inept and malfunctioning EEO program. Ms. Churchill-Earp was manager of the NIH EEO program at the time complaints were received.

Under Ms. Churchill-Earp's leadership, the NIH's EEO complaint process system was decentralized, which had a chilling effect on NIH complaint processing. Until 1995, employees filed their precomplaints with the Office of Equal Opportunity. This decentralization process reactivated the previously failed system, which forced many employees to go to their own organizations to file their complaints. Many reputable current and former EEO/Diversity employees alleged that, "**NIH complaints have artificially denied because many employees were afraid to file new complaints against officials within their own organizations.**"

A number of knowledgeable employees strongly blame Ms. Churchill-Earp for actions and activities that resulted in the de-emphasis and devaluation of the NIH Special Emphasis programs. She allegedly reorganized the OEO budget that had separate allocations for each special emphasis group by lumping all the funding together as funding for a diversity program. For tracking and monitoring purposes, it would have been better to budget and track each program separately.

Under Ms. Churchill-Earp's leadership, it is alleged that NIH has basically been unilaterally relieved of its responsibility for complying with the Federal Equal Opportunity Recruitment Program.

- *Ms. Churchill-Earp's Treatment of Employees With Disabilities at NIH*

While employed at the NIH, Ms. Churchill-Earp had a record of encountering problems with some employees suffering from disabilities. While an African-American at the FDIC was recuperating from breast cancer surgery, Ms. Churchill-Earp played a role in her forced disability retirement.

Ms. Churchill-Earp ended the detail of a White female **deaf** employee who was detailed to the OEO indefinitely and did not wish to return to her former organization.

Ms. Churchill-Earp is alleged to have okayed the termination, or played a leading role in the termination of an African-American male paraplegic stay-in-school employee via non-renewal of his appointment. Some employees stated that he was a good worker.

NIH's OEO under Ms. Churchill-Earp refused to take a White male deaf employee when his detail to the Public Health Service ended due to streamlining at Health & Human Services (HHS). The committee for employees with disabilities wrote a letter to former HHS Secretary Donna Shalala complaining about Ms. Churchill-Earp's management style and her role in basically dismantling the disability program.

- *NIH's EEO Office. A Hostile Environment for African-Americans*

The following examples, as told to the Task Force, raise some compelling and serious questions as to the fitness, ability, and temperament of Ms. Churchill-Earp to serve as an effective and fair EEOC Commissioner based upon her action as the top EEO officer at NIH:

- A. Under Ms. Churchill-Earp's leadership, the OEO office was basically a hostile work environment for an excessive number of its African-American employees.
 - B. A minimum of four senior African-American OEO employees were pressured and finally retired because of unjustifiable mind-boggling pressure and abuse they suffered at the hands of OEO management at NIH.
 - C. On Ms. Churchill-Earp's watch and during her stewardship of the NIH OEO office, an unsuccessful attempt was made to label two employees as incompetent, with the bottom-line goal being their eventual termination or reassignment.
 - D. On Ms. Churchill-Earp's watch and during her stewardship of the NIH OEO office an excessively high number of African-Americans left because of racism, sexism, abuse of authority and other EEO-related problems. According to very knowledgeable sources, a minimum of 13 African-Americans left the NIH OEO during Ms. Churchill-Earp's tenure as director; a number of whom were at the **GS-12** or higher grade levels.
 - E. According to current and former OEO employees, during staff meetings, Ms. Churchill-Earp made comments such as, "*African Americans have never been as successful as other immigrant groups because they do not use English as their first language.*"
 - F. Current and former OEO staffers claim that Ms. Churchill-Earp told African American staffers, in more than one staff meeting with other groups present, that they are too sensitive about the use of the "N" word (**nigger**).
 - G. According to official NIH data, during Ms. Churchill-Earp's tenure, the average salary for African Americans decreased from approximately \$68,000 to approximately \$48,000 while the salaries of Asians, Hispanics, and Whites rose substantially.
- *Ms. Churchill-Earp's Affirmative Action program for White males in the OEO*
According to knowledgeable sources, in one of her annual (believed to be FY 1995) performance evaluations, Ms. Churchill-Earp stated, "White males are underrepresented in the OEO." She used this premise to show favoritism towards White males in hiring, promotions, and training. She reassigned a GS-13 White male Personnel Specialist who was attending law school (with Agency support) to the OEO. Six months later the African-American female GS-14 EEO Complaints manager was removed from her job.
According to knowledgeable sources, in one of her annual performance accomplishments (believed to be FY 1999), Ms. Churchill-Earp prides herself on decreasing the percentage of African-American and female employees in the OEO from 75% and 72% respectively; also, when she arrived in 1994 to 64.3% and 50%. Ms. Churchill-Earp created positions for White males and every White male in the OEO was promoted. Ms. Churchill-Earp brought in one White male law student for the summer of 1996, kept him on the payroll while he returned to law school in Chicago, and hired him in 1997. She gave him a promotion in 1998 so that he could qualify for a Congressional training program. NIH's OEO office paid part or all of his salary for the year of training. At the end the training, he left to become a lobbyist. Ms. Churchill-Earp denied training to one African-American female employee and told her that she would never get any training while she was the NIH OEO Director.
In contrast, NIH's OEO office, under Ms. Churchill-Earp's leadership, terminated an African-American 3rd year male law student stay-in school employee when his supervisor, the African-American female whose complaint was the subject of the June 2001 hearing, opposed Ms. Churchill-Earp's return as the Director, OEO, from a detail (that was supposed to be a permanent reassignment) to another NIH organization.
 - *Ms. Churchill-Earp's personal values seem to dictate her professional actions*
During the June 2001 hearing previously referenced, one of the declarations from an African-American female witness for the complainant stated that *Ms. Churchill-Earp told this female that she (Ms. Churchill-Earp) did not like the complainant because she had a child out of wedlock*. There are many single mothers in the work place who deserve to have someone setting policy on the

commission with an open mind and someone who has not admittedly engaged in sex/gender discrimination.

Suicide of a White Female Doctor

In December 1998, a respected White female Doctor, Health Scientist Administrator at NIH committed suicide in the NIH's parking lot after being terminated. According to those with knowledge of the case, she was pursuing an EEO complaint against the NIH, which she felt was not being handled in a fair, timely, and equitable manner. It is obvious that she felt the same pressure, hopelessness, and isolation other NIH employees frequently encountered when filing an EEO complaint.

Closing Comments and Request

It is very important that the U.S. Senate Health, Education, Labor, and Pension Committee conduct a thorough investigation of the Federal career and track record of Ms. Churchill-Earp. Based on numerous reports, Ms. Churchill-Earp's track record appears to be one of anti-EEOC, anti-Affirmative Action, and basically out of sync with mainstream thinking in the EEO and Diversity arena. *There are thousands of qualified candidates who have a proven track record of supporting civil rights and upholding EEO laws and regulations.*

If you need additional information or please feel free to contact the Federal Sector Task Force, at your convenience. We are willing to provide any assistance that we can.

We strongly suggest that Ms. Churchill-Earp's name be withdrawn or her nomination rejected and that a more suitable nominee be submitted to the U.S. Senate for confirmation.



LEROY W. WARREN, JR., *Chairman*, NAACP Federal Sector Task Force.

SUBMITTED QUESTIONS

Response from Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture

Questions Submitted by Hon. Marcia L. Fudge, a Representative in Congress from Ohio

Question 1. On Tuesday, November 19, 2019, I made the following request for information.

Subcommittee staff contacted USDA on November 12 to request information (see below) on the number of vacancies in your office over the last 4 years. Staff also requested details on any management inquiries or reports initiated by employees during your current tenure.

To date, we have yet to receive the information we asked for. The most recent email response from USDA received at 8:40 a.m. this morning lacks sufficient detail and failed to address the Subcommittee's initial inquiry. I can only assume the decision to provide such a response on the morning of today's hearing is intentional.

However, we do know from the information you shared with my office, is there has been significant declines in the number of employees in the Office of Civil Rights from Fiscal Year 2016 to Fiscal Year 2019. There are also inconsistencies and missing information in the data your office shared regarding the number of EEO complaints across the Department. The information only shows data for ten of the 29 USDA agencies, and out of over 300 complaints filed by employees across the ten agencies in Fiscal Year 2019, there were only two findings of wrongdoing out of 300.

The following information is requested:

All Equal Employment Opportunity complaints filed within each agency over the last 12 years at the Department, including types of complaints, dispositions, average processing time, and whether any findings were made.

Answer. Fiscal Year 2010 through Fiscal Year 2019 data is publicly available on the USDA website at <https://www.usda.gov/nofear/agencies>. Because the reports include 5 previous years of comparative data, the Fiscal Year 2010 agency reports includes information back to Fiscal Year 2005. The detailed data includes the vol-

ume of complaints, complaints by issue, processing time, findings data, and status of complaints pending.

Question 2. We would like any management inquiry reports that have been filed by an employee at the Department.

Answer. To clarify the nature of these reports management inquiries are initiated by the Department, not filed by an employee, when there are allegations of misconduct. USDA takes the concerns of employee misconduct seriously; as such, agencies are authorized to conduct investigations of possible misconduct by agency employees involving violations of rules, regulations, or law. Your request for all management inquiry reports within the Department may include reports pertaining to an ongoing USDA inquiry/investigation. Disclosing responsive information may interfere with and harm the integrity of any investigation/inquiry. Therefore, the Department would welcome the opportunity to meet with your staff so that we may better understand how we can best respond to your request.

Question 3. Please provide the Subcommittee with the number of employees and vacant positions in the Office of the Assistant Secretary for Civil Rights over the last 4 years at the Department.

Answer. The Department previously provided the following staffing levels: 140 in FY 2016, 137 in FY 2017, 129 in FY 2018, and 118 in FY 2019. While our Human Resources systems do not track historical vacancies, USDA seeks to hire to the appropriate levels so we may fulfill the important missions of each agency and staff offices including, but not limited to, the Office of the Assistant Secretary.

Question Submitted by Hon. Alma S. Adams, a Representative in Congress from North Carolina

Question. During the hearing, Ms. Naomi Earp committed to providing any and all information on the Farmer Fair Practice Rule and an explanation on the Office of the Assistant Secretary involvement in the process. I look forward to hearing her response.

Answer. On June 26, 2019, the Office of Assistant Secretary for Civil Rights (OASCR) reviewed and cleared the proposed rule, Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act (P&S Act). OASCR moved the proposed rule forward but retained the right to conduct a compliance review and request evidence of any outreach activity resulting from this regulation.

Additionally, OASCR recommended Agricultural Marketing Service (AMS) conduct proactive mitigation strategies to ensure that minority and under-resourced packers, swine contractors, livestock producers and poultry growers have the same opportunity for preferences and advantages as similarly situated non-minority farmers, producers and growers. OASCR further recommended AMS increase its outreach activities, as appropriate, to ensure protected groups are aware of the new guidance.

The proposed rule was published January 13, 2020, in the *Federal Register*.

Questions Submitted by Hon. Jimmy Panetta, a Representative in Congress from California

SNAP

Question 1. Can you please elaborate on your office's involvement in USDA rule-making related to the Supplemental Nutrition Assistance Program (SNAP)? Specifically, can you elaborate on the process of preparing and writing the Civil Rights Impact Analysis (CRIA) associated with each of these rulemakings?

- a. *Final Rule: SNAP Requirements for Able-Bodied Adults Without Dependents*
- b. *Proposed Rule: Revision of Categorical Eligibility in SNAP*
- c. *Proposed Rule: SNAP Standardization of State Heating and Cooling Standard Utility Allowances*

Answer. A civil rights impact analysis (CRIA) is a proactive prevention tool through which civil rights offices advise programs from a neutral perspective on ways to mitigate potential disproportionate or adverse impacts. Understanding any change impacts customers, a CRIA is used to determine whether measurable, anticipated impacts (1) disproportionately impact protected classes, or (2) meet the quantitative condition for adverse impact. When results suggest potential disproportionate or adverse impacts, the civil rights office recommends strategies to program officials to eliminate or mitigate those potential impacts. Program officials decide which strategies to implement.

The Civil Rights Division (CRD) in the Food and Nutrition Service (FNS) prepared a CRIA for each of the rules listed above. The FNS CRD worked in collaboration with FNS program officials to measure whether these rules were likely to result

in disproportionate impact or adverse impact to protected groups. Based on the results of this analysis, FNS CRD proposed strategies to mitigate and/or prevent potential disproportionate or adverse impacts. The Office of the Assistant Secretary for Civil Rights reviewed each of these three FNS CRIA's and determined the FNS conducted a sound analysis and made appropriate recommendations.

Question 2. Could you please elaborate on your statement that your office has “no role in rulemaking”? How is it that your office has no role in rulemaking, given that your office is responsible for the CRIA that accompanies all USDA proposed and final rules?

Answer. OASCR has no policy decision-making role in the rulemaking process. A CRIA is a proactive prevention tool through which we advise program officials from a neutral perspective on potential disproportionate or adverse impacts, and ways to mitigate or eliminate those impacts.

Question 3. Could you please provide answers to the following questions about USDA's proposed rule to revise categorical eligibility for SNAP? Specifically:

When did your office find out about this rule?

Answer. OASCR received the proposed rule, Revision of Categorical Eligibility in SNAP, on October 29, 2018.

Question 3a. At what point did USDA's Food and Nutrition Service request a CRIA for this rule?

Answer. The Food and Nutrition Service (FNS) requested the CRIA on October 29, 2018.

Question 3b. How long did your office have to complete the CRIA?

Answer. The OASCR cleared the proposed rule on October 31, 2018.

Question 3c. How long after your office completed the CRIA was the proposed rule published on the *Federal Register*?

Answer. The rule cleared OMB on July 11, 2019 and was published in the *Federal Register* on July 24, 2019.

Question 4. Could you elaborate on the process for researching and writing the CRIA?

When your office determines that a proposed rule will have an adverse impact on certain minority populations, what do you do?

Answer. USDA follows its Departmental Regulation when preparing CRIAs and communicating with agencies. See the Roles and Responsibilities section of attached DR 4300-004, attached (see *Attachment 1*, p. 34). When a CRIA reveals potential disproportionate or adverse impacts on protected groups, OASCR recommends strategies from a neutral perspective to eliminate or mitigate those potential impacts. OASCR also reserves the right to recommend additional mitigating strategies based on our review of complaint trends and compliance review results.

Question 4a. Do you have authority to halt or alter the rule in accordance with your findings?

Answer. OASCR recommends strategies from a neutral perspective to eliminate or mitigate potential negative civil rights potential impacts. As provided in Departmental Regulation 4300-004, OASCR may issue a Concurrence, Contingent Concurrence, or Non-Concurrence prior to the implementation of a proposed action. See pp. 8-9 of attached DR 4300-004. However, OASCR does not have the independent authority to halt or alter the rule.

Question 5. Could you elaborate on the impact of all three SNAP rules on legal permanent residents who participate in the program? Specifically:

Did you assess the impact of the SNAP rules on legal permanent residents who may be afraid to seek benefits given this Administration's broader anti-immigration agenda?

Answer. OASCR's scope is limited to groups protected by civil rights laws and regulations. OASCR followed Departmental Regulation 4300-004 when reviewing this CRIA. When a CRIA reveals potential disproportionate or adverse impacts on protected groups, OASCR recommends strategies from a neutral perspective to eliminate or mitigate those potential impacts. OASCR also reserves the right to recommend additional mitigating strategies based on our review of complaint trends and compliance review results. USDA does not have any direct role in immigration policy but supports our Federal partners when their initiatives involve USDA equities.

Question 5a. Given USDA's three proposals to cut SNAP benefits, do you predict a decline in SNAP applications from legal permanent residents?

Answer. Residency status is outside the purview of OASCR's mission. The Food & Nutrition Service (FNS) analyzes program participation rates for the SNAP program. For further information on SNAP participation rates, please see FNS data

compilations at <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>.

ERS/NIFA

Question 6. Can you please elaborate on your role in assessing the civil rights impact of the relocation of the Economic Research Service (ERS) and the National Institute of Food and Agriculture (NIFA) to Kansas City?

Answer. OASCR collaborated with the Research, Education, and Economics (REE) mission area in the analysis of demographic data to determine whether impacts to protected classes were disproportionate to their representation in the ERS and NIFA workforce. OASCR determined impacts were not disproportionate. The mitigating strategies proposed and implemented by ERS and NIFA were appropriate as proactive prevention measures. OASCR will continue to monitor employment complaint and compliance review trends to determine whether any additional mitigating strategies should be considered.

Question 7. Do you have concerns about the impact of this relocation on the timely dispersal of resources and information to minority and beginning farmers and ranchers?

Answer. No. On October 16, 2019, NIFA announced the FY19 awards for the BFRDP. NIFA made grants to 32 institutions totaling \$14.3 million. NIFA's target is to have all FY 2019 annual funding released by March 2020.

Market Facilitation Program (MFP) Payments

Question 7. You indicated that you were not aware of any details related to the Market Facilitation Program, which is now the single largest source of farm subsidies in operation. At the same time, an analysis conducted by the Farm Bill Law Enterprise showed that 99.4% of Market Facilitation Program funds have gone to non-Hispanic white farmers.

Given this troubling statistic, did you conduct a CRIA prior to USDA releasing the latest tranche of Market Facilitation Program payments?

Answer. OASCR reviewed and cleared the Farm Service Agency's (FSA) Market Facilitation Program on July 26, 2018.

Question 7a. If not, do you now plan to conduct a CRIA focused on the Market Facilitation Program?

Answer. See answer to *Question 7*.

Questions Submitted by Hon. Dusty Johnson, a Representative in Congress from South Dakota

Question 1. Ms. Earp, it was reported that you stated, "frequent filers use EEO complaints to punish managers and supervisors," and that you believe the practice is "a pretty effective tool." In reviewing your verbal testimony, you state—verbatim—that "some frequent filers use EEO complaints to punish managers and supervisors; it's a pretty effective tool." I see what was reported (and how it was reported) *versus* what was said to mean two very different things.

Can you please provide clarification of your verbal statement for the record?

Answer. Ms. Earp is no longer with the Department and therefore the Department cannot comment.

Question 2. Ms. Earp, it was reported that your "comments perpetuate the conspiracy theory that accusations are fake and enables[sic] a culture of victim blaming at USDA." And that "this rhetoric seeks to preemptively absolve bad actors at the Department of the role they may play in these cases."

For the record, please respond to these claims.

Answer. Ms. Earp is no longer with the Department and therefore the Department cannot comment.

Question 3. Ms. Earp, it was reported that an attitude is being bred where employees are less likely to report discrimination and harassment in fear of reprisal or that complaints will not be taken seriously. Your written and verbal testimony contradict such a statement. Additionally, you have said in previous instances that you will devote your energy to building a "culture of civility" based on respect for the customers and employees of USDA. That your priority would be every person's right to respect and dignity in every encounter between employees and those USDA serves. That your goals included to target harassment and retaliation issues with new approaches to training designed to address behavior and not just raise awareness and sensitivity. That eradicating harassment and retaliation would be the centerpiece of your tenure to permanently change the very culture and atmosphere of USDA.

Can you outline what you and your team have done to initiate these goals? How are you working to address the behaviors that lead to discrimination, harassment,

and/or retaliation? What did you find the environment to be like when you arrived at OASCR? Were there issues that needed your immediate attention prior to fulfilling your priorities? Also, how do you think your footprint will pave the way for future Administrations and leadership?

Answer. Ms. Earp is no longer with the Department and therefore the Department cannot comment.

Strengthening civil rights in agriculture programs is a top customer service priority for OASCR. In FY 2019, the OASCR Call Center processed 35,296 telephone and written inquiries, of which 69% referred to food programs, and 13% were in Spanish. The number of program complaints decreased from 405 to 355 (12%) between FY 2018 and FY 2019, while the number of days to investigate program complaints decreased from 594 to 420 (29%) during this timeframe. OASCR is implementing a pilot program to attempt early resolution of program complaints, considering procurement options to support this function, and acquiring a more effective complaint system to manage and track program complaints in FY 2020.

OASCR is implementing an aggressive approach in proactive prevention, both to prevent complaints and increase compliance. These efforts include the development of the USDA Diversity Strategic Plan, the USDA Affirmative Employment Plan, the Innovative American Diversity Month, and several training sessions aimed at enhancing the analytic and evaluation skills of civil rights professionals in the USDA and its subcomponents.

In FY 2019, OCR oversaw 19 subcomponent compliance reviews and completed 4 compliance reviews, providing mission areas with recommendations to strengthen their EEO and civil rights programs. OCR standardized the methodology for conducting barrier analyses and CRIA, conducted analytic training for USDA OCR and subcomponent staff, resulting in process improvements that reduced CRIA review time from 3 weeks to 3 days. OCR established Departmental Regulation 4120-001, Annual Department Civil Rights Training and completed a draft Departmental Regulation 4300-008, Reasonable Accommodation and Personal Assistance Services. OCR also established a committee to assess gaps and strengthen operations in EEO complaint processing, program complaint processing, CRIAs, use of demographic data to evaluate equal access to farm programs, proactive prevention, and the impact of the 2018 realignment on OCR's ability to effectively execute its mission.

Question 4. Ms. Earp, on May 09, 2017 Secretary Perdue issued a *policy statement* (<https://www.usda.gov/sites/default/files/documents/5817-Policy-Statement.pdf>) (see *Attachment 2*, p. 47) on the First Amendment, reestablishing the Department's commitment to safeguarding every American's First Amendment rights. The Secretary goes on to discuss how the freedom of expression flourishes in a climate of mutual respect and tolerance, and that USDA will continue to uproot and eliminate discrimination, harassment, and retaliation, ensuring customers and employees work in an atmosphere of dignity and equality.

Ms. Earp, how have you worked to achieve what the Secretary outlines here? Please be as specific as possible.

Answer. Ms. Earp is no longer with the Department and therefore the Department cannot comment.

On January 16, 2020, USDA issued a proposed rule that would implement President Trump's Executive Order No. 13831 (May 3, 2018), remove regulatory burdens on religious organizations, and ensure that religious and non-religious organizations are treated equally in USDA supported programs. The proposed rule ensures that USDA-supported social service programs are implemented in a manner consistent with the Constitution and other applicable Federal law, and it also builds on Secretary Perdue's 2017 *Policy Statement on First Amendment* (<https://www.usda.gov/media/press-releases/2017/05/09/secretary-perdue-issues-policy-memo-religious-liberty-and-freedom>) (see *Attachment 3*, p. 48) that reestablished USDA's commitment to safeguarding every American's First amendment rights. The proposed rule incorporates the Attorney General's 2017 Memorandum for All Executive Departments and Agencies, *Federal Law Protections for Religious Liberty* (<https://www.justice.gov/opa/press-release/file/1001891/download>) (see *Attachment 4*, p. 49). That memorandum was issued pursuant to President Trump's Executive Order No. 13798 (May 4, 2017), and it guides all Federal administrative agencies and executive departments in complying with Federal law.

Question 5. Ms. Earp, on October 29, 2019, the Assistant Inspector General for Audit sent notification of a final action verification of nine recommendations related to an audit report entitled *Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights* (<https://www.usda.gov/oig/webdocs/60026-0001-21.pdf>) (see *Attachment 5*, p. 66). I am pleased to see that OASCR and the Office of Procurement and Property Management worked so diligently to close the audit

report recommendations. I did notice however, that one recommendation had to be reopened, with a corrective action to be completed on November 09.

What is the status of Recommendation 1, the training of OASCR staff on Federal legal authorities and Departmental policies and procedures regarding proper practices for obligating funds? Have the three remaining SES and GS-15 staff been provided training?

Answer. OASCR certified during the first quarter of FY20 the language required by the IG has been incorporated into the performance standards of the SES and GS-15 supervisors, and OASCR plans to provide this training during the second quarter of FY20.

ATTACHMENT 1

U.S. Department Of Agriculture
Washington, D.C. 20250

Departmental Regulation

Number: 4300-004

Date: October 17, 2016

Subject: Civil Rights Impact Analysis

OPI: Office of Assistant Secretary for Civil Rights

1. Purpose
 2. Special Instructions/Cancellation
 3. Scope
 4. Policy
 5. Definitions
 6. Objectives
 7. Actions Requiring CRIAs
 8. Roles and Responsibilities
 9. CRIA Analysis Elements
 10. Mitigation
 11. Outreach Strategies
 12. Monitoring and Evaluation
 13. Conclusion
 14. Retention of CRIA Records
 15. Expedited Clearance for Regulatory Action Only
 16. Waivers
 17. CRIA Technical Assistance Request
- Appendix A
Attachment A: Sample: Current and Proposed
Organizational Changes
Appendix B Sample—CRIA Certification
Appendix C Authorities and References

1. Purpose

This Departmental Regulation (DR) establishes the Civil Rights Impact Analysis (CRIA) policy and procedures for the U.S. Department of Agriculture's (USDA or the Department) employment, federally conducted and federally assisted programs and activities.

The regulation also provides guidance to the agencies, Departmental Management (DM), National Appeals Division (NAD), Office of the Inspector General (OIG), and staff offices of the Department on how to prepare and meet all CRIA obligations as set forth in this regulation.

2. Special Instructions/Cancellation

This regulation replaces DR 4300-004, Civil Rights Impact Analysis, dated May 30, 2003.

Agencies must update their processes and procedures in accordance with this DR within 120 calendar days of the effective date.

3. Scope

This regulation applies to all USDA agencies, DM, staff offices, NAD and OIG.

4. Policy

It is USDA's policy to treat customers and employees fairly and equitably, with dignity and respect, regardless of race, color, national origin, disability, sex, gender identity (which includes gender expression), political beliefs, age, marital, family/parental status, religion, sexual orientation, reprisal, or because all or a part of an individual's income is derived from any public assistance program.

Essentially, agencies, DM, staff offices, NAD and OIG are required to analyze the civil rights impact(s) of policies, actions, or decisions that will affect the USDA workforce or its federally conducted or federally assisted programs and activities.

5. Definitions

Within the context of this regulation, the following definitions apply:

a. Agency. For purposes of this directive, agency is defined as a major program organizational unit of the Department with delegated authorities to deliver programs, activities, benefits, or services. The term “agency” does not include DM, OIG, NAD or staff offices.

b. Agency Head. The Administrator, Chief or Director or an office or agency who is the official named or designated to have primary responsibility for the management of the Agency as delegated under 7 CFR 2, (<https://www.govinfo.gov/app/details/CFR-2006-title7-vol1/CFR-2006-title7-vol1-part2>), *Delegations of Authority by the Secretary of Agriculture and General Officers of the Department*.

c. Agency Head Assessment. The annual assessment of Agency Heads and applicable Staff Office Directors by the Office of the Assistant Secretary for Civil Rights (OASCR), utilizing the *Civil Rights Performance Plan and Accomplishment Report* (the Plan), to evaluate and rate each Agency and applicable Staff Office for effectiveness and compliance with the Department’s civil rights policies and regulations. The Plan requires agencies and applicable staff offices to annually assess their civil rights activities and accomplishments and submit a report to OASCR to ensure civil rights accountability throughout USDA. The civil rights accomplishment rating issued by OASCR serves as a representative rating of the Agency Heads and applicable Staff Office Directors.

d. Assistant Secretary for Civil Rights (ASCR). The civil rights official for USDA with authority pursuant to 7 CFR 2.25 (<https://www.gpo.gov/fdsys/pkg/CFR-2005-title7-vol1/pdf/CFR-2005-title7-vol1-sec2-25.pdf>) for the performance and oversight of civil rights functions within USDA, including the authority and discretion to delegate civil rights functions to Agency Heads and Offices.

e. Assisted Programs and Activities. Program services, benefits or resources delivered through a recipient of USDA funding to assist an ultimate beneficiary.

f. Civil Rights Director. An individual appointed by the Agency Head, who is responsible for the implementation of an equal employment program and for federally assisted and federally conducted programs, to promote equal employment opportunity, and to identify and eliminate discriminatory practices and policies. Civil Rights Directors report directly to their Agency Heads and for the purposes of this regulation, the Civil Rights Director will also serve as an EEO Director as set forth at 29 CFR 1614.102(b)(4) (http://www.ecfr.gov/cgi-bin/textidx?SID=c72459d7d08958d9bc0ed6bbebc4d448&mc=true&node=se29.4.1614_1102&rgn=div8).

g. Civil Rights Impact. The consequences of policies, actions, and decisions which impact the civil rights and opportunities of protected groups or classes of persons who are USDA employees or program beneficiaries.

h. Civil Rights Impact Analysis (CRIA). An analytical process used to determine the scope, intensity, direction, duration, and significance of the effects of an Agency’s proposed employment and program policies, actions, and decisions. A CRIA identifies the effects of: (1) proposed employment actions; (2) eligibility criteria for USDA benefits; (3) methods of implementation, (4) under-representation or lack of diversity within its programs; or (5) any other Agency-imposed requirements that may adversely and disproportionately impact employees or program beneficiaries based on their membership in a protected group. Proper follow-up actions based on CRIA findings can lessen, eliminate or substantially alleviate these adverse impacts on protected groups.

i. Civil Rights Implication. Information or data that suggest, or from which one may infer, that a policy, action, or decision will affect groups or classes of persons, or any given individual, positively or negatively.

j. Concurrence. OASCR approval of the proposed action, policy or decision that will affect the USDA workforce or its federally conducted or assisted programs or activities based on the requirements of current civil rights laws.

k. Conducted Programs and Activities. Program services, benefits or resources delivered directly to the public by USDA.

l. Contingent Concurrence. OASCR concurrence dependent upon specific actions required to be taken by the agency, staff office, DM, NAD or OIG or the submission of additional information requested to complete the assessment as to whether a proposed action, policy or decision will affect the USDA workforce or its federally conducted or its assisted programs and activities.

m. Departmental Management. USDA's central administrative management organization that provides support to policy officials of the Department and overall direction and coordination for the administrative programs and services of USDA under the direction and supervision of USDA's Assistant Secretary for Administration (ASA) with authority pursuant to 7 *CFR* 2.24 (<https://www.gpo.gov/fdsys/granule/CFR-2011-title7-vol1/CFR-2011-title7-vol1-sec2-24>).

n. Disparate Treatment. The less favorable treatment of a person or persons by reason of one or more prohibited bases when compared with/contrasted to another group(s) or class(es) of persons that is similarly situated.

o. Disparate Impact (Adverse Impact). Neutral employment or program policies, practices, actions, or decisions which are applied evenhandedly (are of "general applicability"), but have the effect of excluding or otherwise adversely affecting groups or classes of persons by reason of one or more prohibited bases.

p. Disproportionate Impact. A theory of liability which prohibits an employer or program from using a facially neutral employment practice that has a greater adverse impact on members of a protected class. A facially neutral employment practice or program that does not appear to be discriminatory on its face; rather it is discriminatory in its application or effect.

q. Eligibility Criteria. Summary criteria for participant selection based on requirements mandated by Congress or internal Agency recommendations and regulations.

r. Employee. An individual employed in any position within USDA. Contractors, interns, and volunteers may be included under this definition; however, specific criteria must be met in order for them to be classified an "employee" for EEO purposes.

s. Expedited Clearance. The process set forth in Section 15 of this regulation.

t. Group or Class. Multiples of similarly situated persons who may be distinguished by their common race, color, national origin, age, disability, and where applicable, sex, gender identity (includes gender expression), marital status, familial status, parental status, religion, sexual orientation, genetics, political beliefs, or receipt of income from any public assistance program.

u. Methods of Implementation. The full range of practices, management prerogatives, application criteria, participation requirements, processes, and procedures used by management to administer federally assisted or federally conducted programs and activities within USDA.

v. Non-concurrence. OASCR decision to not concur with a proposed action, policy or decision that will affect the USDA workforce or its federally conducted or assisted programs or activities based on the requirements as set forth in this regulation and current civil rights laws.

w. Policies, Actions, or Decisions. All those prerogatives exercised by USDA as set forth in Section 7 below.

x. Prohibited Bases. Discrimination that is prohibited in employment and program activities based on race, color, national origin, age, disability, sex, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program.

y. Protected Groups. Any person, group, or class of persons protected under Federal regulations and/or any Executive Orders from discrimination based on a prohibited basis.

z. Recipient. A person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, or information from USDA, or to participate in activities and programs conducted or funded in whole or part by USDA.

aa. Reorganization. The planned elimination, addition, redistribution of functions or duties, or movement of employees in an organization or the movement of a function within a competitive area. For the purposes of this regulation, reorganizations also include office closures, relocations, abolishment, consolidations, reductions-in-force, Transfer of Functions, realignments, and reassignments.

bb. Staff Office. An administrative office with a specialized support function as defined by 7 *CFR* 2.4 (<https://www.gpo.gov/fdsys/granule/CFR-2010-title7-vol1/CFR-2010-title7-vol1-sec2-4/content-detail.html>). All staff offices, with the exception of NAD and OIG, report directly to the Secretary of Agriculture. NAD and OIG are in the Secretary's reporting chain, but have independent authority and reporting responsibilities.

cc. Significant Regulatory Action. Proposed, interim, or final rules that are likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of

entitlements, grants, user fees, or loan programs; or (4) raise novel legal or policy issues arising out of legal mandates.

dd. Transfer of Function. Occurs when a function will cease in one competitive area and move to another competitive area that does not perform that function at the time of the transfer or the movement of a competitive area in which the function is performed to a different local commuting area.

6. Objectives

The objectives of this regulation are to:

- a. Establish procedures for the review and analysis of policies, regulations, reorganizations, advisory committee establishments and renewals, or decisions whose implementation may have potential adverse impacts based on civil rights laws, regulations and/or USDA's policy on nondiscrimination;
- b. Ensure that the issuance of policies, regulations, reorganizations, advisory committee establishments and renewals or decisions may not adversely and/or disproportionately impact employees and/or program beneficiaries and recipients because of their membership in a protected group;
- c. Utilize CRIAs as a management tool to assess the proposed action to determine the potential impacts on employees and/or program participants;
- d. Reinforce the requirement to collect demographic data in accordance with current Federal civil rights laws and regulations and USDA DRs and policies;
- e. Require outreach strategies, as outlined in CRIA outreach plans, to be implemented and monitored to ensure that protected groups are informed of the benefits, requirements, *etc.*, of specific policies and/or regulations;
- f. Establish mitigation strategies to lesson any adverse impact; and
- g. Provide oversight and monitoring of the proposed action in order to measure the extent of any adverse impact(s) and the effectiveness of the mitigation strategy in lessening the impact and results of the outreach strategy.

7. Actions Requiring CRIAs

a. The following actions require the preparation of a CRIA and must be submitted to OASCR for determination of CRIA sufficiency and final clearance:

- (1) Significant regulatory actions and notices to be published in the *Federal Register* and the *Code of Federal Regulations*;
- (2) Charters and charter renewals for advisory committees, councils, or boards managed on behalf of the Department or Secretary;
- (3) Departmental regulations, manuals, and notices that require Departmental approval;
- (4) Proposed reorganizations requiring Departmental approval as prescribed in *DR 1010-001* (<https://www.ocio.usda.gov/document/departmental-regulation-1010-001>), *Organization* (see definition of reorganization for additional employment actions); and
- (5) At the discretion of the ASCR, other policy, program, action, or activity, or the implementation which may have potentially adverse civil rights impacts.

b. The following actions that do not meet the criteria in Section 7(a) above, require a CRIA to be conducted and implemented, but does not have to be submitted to OASCR for determination of CRIA sufficiency:

- (1) New and revised agency-specific instructions, procedures, manuals, and other guidance published in agency directives systems;
- (2) Advisory boards and committees that are established at the discretion of the agency and are not mandated by statute, rule, or USDA regulation;
- (3) Budget proposals;
- (4) Grants and contracts;
- (5) Organizational changes not requiring Departmental notification as prescribed in *DR 1010-001*; and
- (6) National, regional, and local special projects affecting program beneficiaries.

8. Roles and Responsibilities

a. OASCR

OASCR provides the overall leadership, coordination, direction, evaluation and clearance of USDA's programs, activities and impact statements for civil rights concerns, including:

- (1) Consulting, advising, and providing technical assistance to agencies, DM, NAD, OIG, and staff offices;

(2) Identifying civil rights implications and impacts of proposed policies, significant regulations, programs, advisory committees, and employment actions;

(3) Approving proposed policies, significant regulations, programs, advisory committees, and employment actions by the designated time from the Office of Budget and Program Analysis (OBPA), the Office of Human Resources (OHRM), or the White House Liaison Office.

(4) Analyzing and evaluating program participation data and equal employment opportunity data, and make its analyses available to Agencies, DM, NAD, OIG, and Staff Offices;

(5) Providing an assessment of an agency, DM, and applicable staff offices' compliance with CRIAs and this regulation through the Agency Head assessment process;

(6) Provide a Concurrence, Non-concurrence or Contingent Concurrence on the proposed action submitted by the agency, NAD, OIG, and staff office CRIA submissions based on the provisions of this regulation;

(7) May issue a Non-concurrence if agencies have not met requirements of the Contingent Concurrence within 60 days of the requested deadline in the CRIA or the package has been received incomplete and an analysis cannot be completed in time for deadlines requested by OBPA, OHRM, or White House Liaison to be met;

(8) If there is a non-concurrence, may view that as a factor when determining Final Agency Decision (FAD) pursuant to the Department's Equal Employment Opportunity DR; and

(9) Hold agencies, DM, NAD, OIG, and staff offices accountable for actions required as a result of a Contingent Concurrence or a Non-Concurrence.

b. Agencies

All agencies must develop a CRIA when proposing policies, actions, or decisions that affect their workforce or their federally conducted or federally assisted programs and activities. Each Agency Head will take the following actions when developing CRIAs and implementing civil rights strategies related to regulations, reorganizations, and advisory committees:

(1) Analyze the civil rights impact(s) of policies, actions, or decisions that affect their workforce or its federally conducted or federally assisted programs and activities;

(2) Identify the effects of proposed employment actions, eligibility criteria for USDA benefits, methods of implementation, under-representation or lack of diversity within its programs that may adversely and disproportionately impact its employees or program beneficiaries based on their membership in a protected group;

(3) Involve subject matter experts from the appropriate disciplines (*e.g.*, economists, statisticians, budget analysts, civil rights analysts, program management analysts, human resources analysts, *etc.*);

(4) Comply with all components of a Contingent Concurrence in accordance with the terms and conditions of the contingent concurrence and the provisions of this regulation;

(5) Consult with stakeholders, minority groups, disability organizations, educational institutions, and customers, as appropriate, to obtain input prior to decision-making;

(6) Analyze program participation data by race, ethnicity, gender, and disability to identify any adverse impacts (See Section 9, CRIA Analysis Elements for further information);

(7) Analyze impacts of proposed employment actions on protected groups by race, sex, national origin, disability, and age (40 and over). (See Section 9 (b) Reorganizations for further information);

(8) Identify and analyze the civil rights implications and impacts of eligibility criteria, methods of implementation, and other requirements associated with policies, regulations, programs, reorganizations, advisory committees and activities on employees, recipients, and beneficiaries;

(9) Develop mitigation and outreach strategies to eliminate, alleviate, or lessen such impacts (See Sections 10 and 11 for further information);

(10) Refer problematic aspects that cannot be resolved at the agency level to OASCR for review and guidance with supporting documentation on any potential civil rights implications or impacts;

(11) Hold supervisors and managers accountable through their performance review appraisal for:

(a) ensuring that their CRIAs are implemented and effectively eliminate or mitigate any adverse impact on protected groups; and

(b) carrying out all of the responsibilities as required in this regulation;

(12) Submit a CRIA to OASCR, including a Civil Rights Certification signed by the Civil Rights Director on the proposed policy, program, employment action or activity, for review with a determination of CRIA sufficiency;

(13) Obtain either a Concurrence or a Contingent Concurrence prior to implementing any proposed action; and

(14) Failure to comply with the requirements of a Contingent Concurrence will: (1) negatively impact a supervisor's end of year civil rights performance element performance; and (2) the supervisor will be required to conduct another CRIA that complies with the requirements of this regulation.

c. DM, Staff Offices, NAD, and OIG

DM, staff offices, NAD, and OIG must, in collaboration with OASCR, develop a CRIA when proposing policies, actions, or decisions that affect their workforce and take the following actions when developing CRIAs and implementing civil rights strategies related to regulations, reorganizations, and advisory committees:

(1) Analyze the civil rights impact(s) of policies, actions, or decisions that affect their workforce or its federally conducted or federally assisted programs and activities;

(2) Identify the effects of proposed employment actions, eligibility criteria for USDA benefits, methods of implementation, under-representation or lack of diversity within its programs that may adversely and disproportionately impact its employees or program beneficiaries based on their membership in a protected group;

(3) Involve subject matter experts from the appropriate disciplines (*e.g.*, economists, statisticians, budget analysts, human resources analysts, *etc.*);

(4) Consult with stakeholders, minority groups, disability organizations, and customers, as appropriate, to obtain input prior to decision-making;

(5) Analyze impacts of proposed employment actions on protected groups by race, sex, national origin, disability, and age (40 and over). (See Section 9 (b) Reorganizations for further information);

(6) Identify and analyze the civil rights implications and impacts of proposed eligibility criteria, methods of implementation, and other requirements associated with policies, regulations, programs, reorganizations, advisory committees and activities on employees;

(7) Develop mitigation and outreach strategies to eliminate, alleviate, or lessen such impacts (See Sections 10 and 11 for further information);

(8) Refer problematic aspects that cannot be resolved at the Agency level to OASCR for review and guidance with supporting documentation on any potential civil rights implications or impacts;

(9) Hold supervisors and managers accountable through their performance review appraisal for:

(a) Ensuring that their CRIAs are implemented and effectively eliminate or mitigate any adverse impact on protected groups; and

(b) Carrying out all of the responsibilities as required in this regulation; and

(10) Finalize the CRIA with OASCR and obtain certification for the CRIA from the ASA or, if designated by the ASA, the Staff Office Administrator, or appropriate Agency Head for NAD and OIG on the proposed policy, employment action, or activity for review and a determination of CRIA sufficiency.

9. CRIA Analysis Elements

This section outlines the minimum elements necessary for preparing a CRIA on the following:

a. Significant Rules, Non-Significant Rules, Notices, and Departmental Regulations

(1) Background

The Background narrative must:

(a) Indicate whether the rule is proposed, interim or final;

(b) Describe the objective and purpose of the rule;

(c) Identify the beneficiaries and recipients;

(d) Cite the authority(ies) for the rule which would include both programmatic and civil rights authorities;

- (e) List any changes proposed; and
- (f) Identify results, if any, from comments received from *Federal Register* notifications.

(2) Analysis

The analysis narrative must:

- (a) Identify the appropriate theory(ies) of discrimination that will be used to analyze the policy, significant regulation, program, or activity, *i.e.*, disparate treatment, disparate impact;
- (b) Identify whether or not it contains any requirement related to eligibility, benefits, and/or services, that may have the purpose or effect of excluding, limiting, or otherwise disadvantaging any group or class of persons on one or more prohibited bases;
- (c) Describe the civil rights impacts to determine whether:
 - 1 They are likely to be beneficial; such as increased participation, additional program benefits, less requirements for eligibility;
 - 2 They are likely to maintain the *status quo*; or
 - 3 They are likely to have an adverse impact;
- (d) Determine whether or not the civil rights impacts will adversely affect one or more groups or classes of persons, specifically:
 - 1 Whether or not the impacts will be disproportionate; and
 - 2 How the disproportionate impacts will be manifested;
- (e) Identify whether and the extent to which each group or class of persons may be potentially affected, positively or negatively;
- (f) Analyze the regulatory action's objective, implementation, relevant numerical data, and information to determine if there are significant differences in potential civil rights impacts among groups or classes of persons;
- (g) Analyze current race, ethnicity, gender (REG), and if applicable disability data collection of program participants from various sources (*i.e.*, U.S. Census, Census of Agriculture, agency internal databases, *etc.*) to determine if implementation will result in under-representation or will disproportionately impact protected groups;
- (h) Determine whether action or implementation will have an adverse or disproportionate (impact ratios amongst impacted groups by REG impact(s) on protected groups);
- (i) Identify Tribal implications—any actions that may impose an adverse impact on Indian Tribal Governments that are not required by statute;
- (j) Identify positive impacts on protected groups;
- (k) Determine any barriers which exist that prevent the increase of minority, women, or persons with disabilities' participation.
- (l) Identify civil rights monitoring and evaluation processes; and
- (m) Address all OASCR recommendations from prior CRIA response, if applicable (for interim and final rules).

(3) Mitigation

Agencies, DM, NAD, OIG, and staff offices must develop and implement a mitigation strategy that will eliminate, alleviate, or lessen any adverse impact(s) as a result of a policy, action or decision.

(4) Outreach Strategy

Agencies, DM, NAD, OIG, and staff offices must develop and implement an outreach strategy to ensure customers, who are members of protected groups, receive timely notification of any changes to a program or procedure per the regulatory action(s). (See Section 11)

b. Reorganizations

(1) Background

The Background narrative must include:

- (a) Proposed activity;
- (b) Reason for the proposed activity (budgetary constraints, functional changes, *etc.*);
- (c) Effective date of proposed activity; and
- (d) Current and proposed organizational structure.

(2) Analysis

The following methods must be included when preparing an analysis of the proposed action(s):

(a) Analyze how the implementation of the proposed action will or may impact employees (*i.e.*, relocation, change in reporting structure, change in unit name, reassignment, loss of supervisory authority and change in any title, series, grade, duties).

(b) Identify the:

- 1 Total number of full-time equivalent (FTE) (including encumbered and vacant);
- 2 Total number of FTEs impacted;
- 3 Number of impacted encumbered FTEs; and
- 4 Number of impacted vacant positions.

(c) Utilize the prescribed OASCR chart (see *Appendix A*) to capture the specific impacts on each employee by name and their current and proposed title (indicate if supervisory), series, grade, duty station, race, sex, national origin, disability, and age.

(d) Summarize the number and percentage of impacted employees by race, sex, national origin, disability, and age (RSNODA) data.

(e) Summarize the impacts on protected groups based on the RSNODA data.

(f) Outline the criteria used to determine the action(s) (relocation, reassignment, loss of supervisory authority and change in any title, series, grade, duties) impacting each affected employee(s).

(g) Identify any impacts to customer's access to services (positive or negative):

- 1 Address whether any disruption in service for the customer will occur;
- 2 Identify if additional commuting will be required to obtain services; and
- 3 Address if one protected group is impacted more than another.

(3) Mitigation

Agencies, DM, NAD, OIG, and staff offices must develop and implement a mitigation strategy that will eliminate, alleviate, or lessen any adverse impact(s), *i.e.*, loss of supervisory authority, relocation, change in title, series, grade, as a result of the employment action(s).

(a) Mitigation must be tailored to the adverse or disproportionate impact(s). Type of mitigation should include:

- 1 Training of employees with a change in title, series, grade and duties;
- 2 Relocation expenses for employees required to move more than 50 miles;
- 3 Detail opportunity for employees losing supervisory responsibilities;
- 4 Timely communication (w/union, public, customers, employees);
- 5 Involvement of employees in decision making process;
- 6 Maintain reasonable accommodation(s) for persons with a disability;
- 7 Provide assistance with new job search, résumé writing, interviewing techniques and administrative time;
- 8 Allow telework and flextime schedules;
- 9 Research shared office space with another USDA agency; and
- 10 Cross training of employees, so they do not have to relocate.

(4) Outreach Strategy

Agencies, DM, NAD, OIG, and staff offices must develop and implement an outreach strategy to ensure customers who are members of protected groups receive timely notification of any proposed employment action(s) *i.e.*, office closure. (See Section 11)

c. Advisory Committees

(1) Background

The background narrative must include:

- (a) Name of authority that establishes Committee and Council;
- (b) Appointment term for each member;
- (c) Length of the Charter;
- (d) Summary of Committee's function(s); and
- (e) Expiration date.

(2) Analysis

The following methods must be included when preparing an analysis of the proposed action(s):

- (a) Describe the civil rights impacts to determine whether:
 - 1 They are likely to be beneficial; such as increased participation, additional program benefits, less requirements for eligibility;
 - 2 They are likely to maintain the *status quo*; or
 - 3 They are likely to have an adverse impact such as an advisory committee that has no minority members.
- (b) Determine whether or not the civil rights impacts will adversely affect one or more groups or classes of persons, specifically:
 - 1 Whether or not the impacts will be disproportionate; and
 - 2 How the disproportionate impacts will be manifested.
- (c) Identify the appropriate theory(ies) of discrimination that will be used to analyze the program, advisory committee, or activity, *i.e.*, disparate treatment, disparate impact.
- (d) Identify whether or not it contains any requirement related to eligibility, benefits, and/or services, that may have the purpose or effect of excluding, limiting, or otherwise disadvantaging any group or class of persons on one or more prohibited bases.
- (e) Identify whether and the extent to which each group or class of persons may be potentially affected, positively or negatively.
- (f) Identify current and proposed memberships by race, sex, national origin and disability.
- (g) Identify projected vacancies based on current membership's end of appointment.
- (h) Prepare a trend analysis of increase or decrease in diversity based on past 2 to 3 year membership data.
- (i) Determine any barriers which exist that prevent the increase of membership diversity.

(3) Outreach Strategy

Agencies, DM, NAD, OIG, and staff offices must develop and implement an outreach strategy to ensure applicants and nominees, who are members of protected groups, receive timely notification of any advisory committee vacancies. (See Section 11)

10. Mitigation

If an adverse or disproportionate impact is projected the following methods for lessening the adverse or disproportionate impact will be identified and implemented:

- a. Mitigation must be tailored to the adverse or disproportionate impact(s) found in the analysis. Examples of mitigation include:
 - (1) Staggering implementation dates;
 - (2) Delaying or establishing incremental cost increases to lesson financial burdens;
 - (3) Providing adequate time to meet the required timeframes and initial startup times;
 - (4) Incorporating language that will address small businesses and socially disadvantaged beginning and limited resource farmers and ranchers needs (*i.e.*, set aside a percentage of program funding);
 - (5) Giving priority funding projects that provide a benefit to under-served communities, which include urban and Indian Tribal communities; and
 - (6) Addressing eligibility and criteria revisions that ultimately have a disproportionate impact.
- b. Providing guidance and technical assistance to customers to assist them with meeting the established requirements.
- c. Conducting a barrier analysis which includes:

- (1) Identifying any barriers preventing effective implementation and outreach;
- (2) Developing a strategy for eliminating those barriers; and
- (3) Identifying and selecting feasible strategies and actions for implementation that the Agency could utilize to offset adverse and disproportionate civil rights impacts (short-term and/or long-term).

11. Outreach Strategies

The CRIAs will contain an outreach plan that includes the following:

a. Communicating with the following protected groups:

- (1) Minorities;
- (2) Women;
- (3) Persons with disabilities—accessible electronic documents and alternative communication methods (ex., TDD, Braille, if applicable);
- (4) Persons with limited English proficiency (LEP)—translation of vital documents and oral interpretation services;
- (5) Veterans (if applicable);
- (6) Indian Tribal Governments (if applicable); and
- (7) Lesbian, Gay, Bisexual, and Transgender (LGBT) community.

b. Outlining methods the Agency will utilize to ensure the aforementioned protected groups are aware of the proposed actions by contacting affected organizations, institutions, and groups by the following means:

- (1) Face-to-face meetings;
- (2) Emails;
- (3) Postings, newspaper publications;
- (4) Telephonic, television and radio announcements; and
- (5) Website and other social media.

c. Identify an outreach strategy that will eliminate, or alleviate, adverse and disproportionate civil rights impacts for the affected groups or classes of persons. The outreach strategy should include the following:

- (1) Specific methods(s) by which the agency will monitor its outreach efforts to protected groups and organizations (See Section 12);
- (2) Lists of minority organizations, radio and television stations, community based organizations, advocacy groups, disability organizations, colleges and universities, Indian Tribal Governments, Tribal officials, other Federal agencies, and other entities the Agency will contact to ensure protected groups are aware of the benefits of the program;
- (3) Notices posted or advertised;
- (4) Methods of outreach conducted to individuals, organizations, schools, or universities;
- (5) Communication with individuals with disabilities, persons age 40 and above, and LEP customers, and what alternative methods were used to make the contacts, *i.e.*, TTD, Braille; Spanish, *etc.*;
- (6) The outcome of the contacts, and method(s) used to monitor and evaluate contact; and
- (7) The Tribal Governments contacted and the date meetings were held to discuss the program or activity.

12. Monitoring and Evaluation

Each agency, DM, NAD, OIG and staff office, in collaboration with its civil rights office, will monitor and evaluate the results of strategies and/or actions it implements to address adverse and disproportionate civil rights impacts of its programs and employment activities as follows:

a. Monitoring and evaluation responsibilities should be coordinated with or integrated into annual business plans, civil rights strategic plans, Affirmative Employment Program Plans, Civil Rights Implementation Plans, Outreach Plans, *etc.*;

b. Supervisors and managers will be held accountable for implementing strategies and actions to eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts via annual performance plans;

c. Monitor and evaluate the effectiveness of the outreach and mitigation strategies utilized; and

d. Monitor complaints and compliance reviews resulting from the actions taken and institute any corrective actions necessary to resolve the issues raised.

13. Conclusion

The CRIAs will contain a Conclusion section that will include the following:

- a. A summary statement indicating whether the proposed action, its objective, and/or implementation will have an adverse or disproportionate impact on protected groups; and
- b. A certification signed by the current Civil Rights Director or ASA (for DM and Staff Offices only) (See *Appendix B* for example CRIA Certification).

14. Retention of CRIA Records

Agencies, DM, NAD, OIG and staff offices will retain all CRIA documents for a minimum of three years and make them available to OASCR, OGC, OIG, and other USDA agencies, DM and staff offices upon request, and third parties as prescribed by law.

15. Expedited Clearance for Regulatory Actions Only

a. Agencies are required to complete CRIAs in accordance with Section 9. However, OASCR may agree to expedite the clearance of certain rules, notices, or other regulatory actions **Prior to submission of a CRIA** if an Agency Head submits a final, draft or advance copy of the rule, notice, or other regulatory action, along with a written request. Such a request must include:

- (1) The purpose of the rule, notice, or proposed action;
- (2) Information on who will benefit from issuance of the rule, notice, or proposed action and the manner in which they will benefit;
- (3) The reason or rationale justifying the request for expedited clearance;
- (4) The consequences of denial of a request to expedite the rule, notice, or proposed action; and
- (5) A proposed deadline for completing the CRIA.

b. If the request for expedited clearance is approved, OASCR will either confirm the deadline submitted for completing the CRIA or negotiate a new one. It is likely that a request for expedited clearance will be approved if:

- (1) Expedited clearance will facilitate publication of a rule or notice that must be immediately implemented to protect the health and safety of the public or to prevent or mitigate catastrophic across-the-board economic harm to domestic producers; or
- (2) The rule or notice **must** be promulgated within 30 days or less by order of the President of the United States or the Secretary; and
- (3) The request for expedited clearance is timely received.

c. A request for expedited clearance **may not** be approved if the rule, notice, or other regulatory action is:

- (1) Identified in an agency's planned rulemaking work plan that is required by OBPA;
- (2) Scheduled to be published more than 30 days after the date of the request for expedited clearance; or
- (3) Promulgated at the discretion of the Agency Head.

d. In situations where OASCR agrees to expedite the clearance of a rule, notice, or other regulatory action, the agency must submit the CRIA in accordance with an agreed upon deadline. The agency will be held accountable for:

- (1) Meeting the CRIA deadline agreed upon; and
- (2) Implementing recommendations from OASCR designed to eliminate, alleviate, or mitigate potential adverse and disproportionate civil rights impacts.

16. Waivers (For Regulations Only)

a. An agency may request a waiver from the CRIA approval process if the subject matters, is being implemented in accordance with the requirements of a statute or treaty, and has no foreseeable adverse civil rights impacts. To request a waiver, an Agency Head must submit the final, draft, or advance copy of the rule, notice, or other regulatory action, along with the written request that includes the following information:

- (1) Purpose of the rule, notice, or other regulatory action;
- (2) Information on who will benefit from issuance of the rule, notice, or other regulatory action and the manner in which they will benefit; and
- (3) Justification for the waiver request.

b. A waiver will be granted on a case-by-case basis, for:

Sample: Current and Proposed Organizational Changes—Continued

Name	Current Position Title Grade/Series (indicate if supervisory)	Org. Moved From	Org. Moved To	Proposed Position title Grade/Series	Status/ Duty Station Current/ proposed Miles difference between the offices	Sex	Race	Age	Disability

Appendix B

Sample—CRIA Certification

Certification:

Office and Division or Location: XXXXXX
 Proposed Action: XXXX

I certify I have reviewed and analyzed the appropriate documentation and determined that:

No major civil rights impact is likely to result if the proposed action is implemented.

A major civil rights impact, as described below, is likely to result if the proposed action is implemented.

 Administrator

 Date

Appendix C

Authorities and References

a. Statutory Authorities

- (1) *Age Discrimination Act of 1975* (<https://www.govinfo.gov/app/details/USCODE-2010-title42/USCODE-2010-title42-chap76-sec6101>), as amended
- (2) *Age Discrimination in Employment Act of 1967* (<https://www.eeoc.gov/laws/statutes/adea.cfm>), as amended
- (3) *Alternative Dispute Resolution Act of 1996* (<https://www.adr.gov/pdf/adra.pdf>), as amended
- (4) *Americans with Disabilities Amendments Act of 2008* (<https://www.ada.gov/pubs/adastatute08.htm>), as amended
- (5) *Government Organization and Employees: Departmental Regulations, 5 U.S.C. 301* (<https://www.govinfo.gov/app/details/USCODE-2011-title5/USCODE-2011-title5-partI-chap3-sec301>), January 3, 2012
- (6) *Equal Pay Act of 1963* (<https://www.eeoc.gov/laws/statutes/epa.cfm>), as amended
- (7) *Food Stamp Improvements Act of 1994 P.L. 103-225* (<https://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg106.pdf>), March 25, 1994
- (8) *Genetic Information Nondiscrimination Act of 2008* (<https://www.eeoc.gov/laws/statutes/gina.cfm>)
- (9) *Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002* (<https://www.eeoc.gov/eeoc/history/50th/thelaw/nofear.cfm>)
- (10) *Rehabilitation Act of 1973* (<https://www.eeoc.gov/laws/statutes/rehab.cfm>), as amended
- (11) *Section 503* (http://www.ecfr.gov/cgi-bin/text-idx?SID=b5f7affb3658d6bb059e4e5ce54976e3&mc=true&node=sp41.1.60_6741.a&rgn=div6) of the *Vietnam Era Veterans Readjustment Assistance Act of 1974*
- (12) *Section 307* (<https://archive.opm.gov/biographyofanideale/PUSCSreform.htm>) of the *Civil Service Reform Act of 1978*, as amended
- (13) *Title VI* (<https://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>) of the *Civil Rights Act of 1964*, 42 U.S.C. 2000d, as amended
- (14) *Title VII* (<https://www.eeoc.gov/laws/statutes/titlevii.cfm>) of the *Civil Rights Act of 1964*, as amended
- (15) *Title IX* (<https://www.justice.gov/crt/title-ix-education-amendments-1972>) of the *Education Amendments of 1972*

b. Regulatory and Executive Orders

(1) *Affirmative Employment Programs* **5 CFR 720** (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title05/5cfr720_main_02.tpl)

(2) *Guidance to Federal Financial Assistance Recipients regarding the Title VII Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency*, **7 CFR 15** (<https://www.gpo.gov/fdsys/pkg/FR-2014-11-28/pdf/2014-27960.pdf>), November 28, 2014.

(3) Department of Justice, *Guidelines for Coordination of Enforcement of Non-discrimination in Federally Assisted Programs*, **28 CFR 42.401** (<https://www.gpo.gov/fdsys/granule/CFR-2010-title28-vol1/CFR-2010-title28-vol1-sec42-401>) et seq.

(4) *Equal Credit Opportunity Act of 1977 (Regulation B)*, **12 CFR 202** (http://www.ecfr.gov/cgi-bin/text-idx?SID=72e428d45765d5a512ec05ff19f7c38d&mc=true&node=pt12.2.202&rgn=div5#se12.2.202_11)

(5) **Equal Employment Opportunity Commission (EEOC) Management Directive—110** (<https://www.eeoc.gov/federal/directives/md110.cfm>), *Federal Sector Complaints Processing Manual*, August 5, 2015

(6) **EEOC Management Directive—715** (<https://www.eeoc.gov/federal/directives/md715.cfm>), *EEO Reporting Requirements for Federal Agencies*, October 1, 2003

(7) *Equal Opportunity to Religious Organizations*, **7 CFR 16** (<http://www.ecfr.gov/cgi-bin/text-idx?SID=060bb7e8ca790eb2a18ca1f8f2d24b3f&mc=true&node=pt7.1.16&rgn=div5>)

(8) **Executive Order 13087** (<https://www.gpo.gov/fdsys/pkg/CFR-1999-title3-vol1/pdf/CFR-1999-title3-vol1-eo13087.pdf>), *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*, May 28, 1998

(9) **Executive Order 13145** (<https://www.gpo.gov/fdsys/pkg/WCPD-2000-02-14/pdf/WCPD-2000-02-14-Pg244.pdf>), *To Prohibit Discrimination in Federal Employment Based on Genetic Information*, February 8, 2000

(10) **Executive Order 13152** (<https://www.gpo.gov/fdsys/pkg/WCPD-2000-05-08/pdf/WCPD-2000-05-08-Pg977.pdf>), *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*, May 2000

(11) **Executive Order 13166** (<https://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf>), *Improving Access to Services for Persons with Limited English Proficiency (LEP)*, August 11, 2000

(12) **Executive Order 13672** (<https://www.whitehouse.gov/the-press-office/2014/07/21/executive-order-further-amendments-executive-order-11478-equal-employment>), *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity*, July 21, 2014

(13) *Federal Sector Equal Employment Opportunity*, **29 CFR 1614** (https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614_main_02.tpl)

c. Departmental Regulations and Guidance

(1) **DM 4300-001** (<https://www.ocio.usda.gov/document/departmental-manual-4300-001>), *EEO Complaint Processing Procedures*, July 20, 2001

(2) **DR 1512-001** (<https://www.ocio.usda.gov/document/departmental-regulation-1512-001>), *Regulatory Decision-making Requirements*, March 14, 1997

(3) **DR 4300-005** (<https://www.ocio.usda.gov/document/departmental-regulation-4300-005>), *Agency Civil Rights Programs*, January 14, 1998

(4) **DR 4330-003** (<https://www.ocio.usda.gov/document/departmental-regulation-4330-003>), *Nondiscrimination in USDA-Conducted Programs and Activities*, October 5, 2015

(5) **DR 4330-005** (<https://www.ocio.usda.gov/document/departmental-regulation-4330-005>), *Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA*, June 4, 2013

(6) Annual Civil Rights Policy Statement issued by the Secretary of Agriculture

(7) Any other published regulations, policies, staff instructions, or directives related to non-discrimination

ATTACHMENT 2

United States Department of Agriculture
Office of the Secretary
May 8, 2017

Policy Statement on First Amendment

As your Secretary, it is my privilege to lead the Department of Agriculture (USDA). But make no mistake, it is USDA's career employees—the food inspectors, the forest rangers, the farm loan officers, the research scientists, and all the varied and dedicated USDA employees—who carry out the important responsibilities that Congress has entrusted to us. America eats safely because USDA works.

Today, I want to reestablish this Department's commitment to safeguarding every American's First Amendment rights, particularly the right to free speech *and* the right to free religious exercise. USDA is committed to protecting both. I expect each and every USDA employee to uphold their fellow Americans' First Amendment freedoms. Whether we are inspecting private businesses for compliance with food safety laws or protecting our public lands for recreation, cultivation, and preservation, we must set the example of our nation's highest ideals. Doing so is not optional, and it is not discretionary: It is one of the crucial reasons why we exist.

Freedom of expression flourishes in a climate of mutual respect and tolerance. To that end, USDA will continue to uproot and eliminate discrimination, harassment, and retaliation and ensure our employees and customers work in an atmosphere of dignity and equality—a place where the rules are known, respected, and fair to all. This is one of my primary goals as Secretary.

I intend to evaluate USDA's record on a variety of issues that are vital to our operations and, with your help, chart a course that respects the principles enshrined in our Constitution. And I intend to work hard by your side so that all Americans know that our Department embodies all that is diverse, exceptional, and great about our nation.



Hon. SONNY PERDUE,
Secretary.

ATTACHMENT 3

(<https://www.usda.gov/media/press-releases/2017/05/09/secretary-perdue-issues-policy-memo-religious-liberty-and-freedom>)

 An official website of the United States government



Secretary Perdue Issues Policy Memo on Religious Liberty and Freedom of Speech

Release & Contact Info

Press Release

Release No. 0036.17

Contact: USDA Press
Phone: (202) 720-4623
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(Washington, D.C., May 9, 2017)—U.S. Secretary of Agriculture Sonny Perdue today affirmed the U.S. Department of Agriculture's renewed dedication to religious liberty and freedom of speech. In a policy statement released to all USDA employees, Secretary Perdue said, "Today, I want to reestablish this Department's commitment to safeguarding every American's First Amendment rights, particularly the right to free speech and the right to religious free exercise. USDA is committed to protecting both."

Highlighting the need for a climate of mutual respect and tolerance, Perdue added, "I expect each and every USDA employee to uphold their fellow Americans' First Amendment freedoms. Whether we are inspecting private businesses for compliance with food safety laws or protecting our public lands for recreation, cultivation, and preservation, we must set the example of our nation's highest ideals."

These are lessons we learned as children—that we should be kind to others and treat them with respect. Doing so is not optional, and it is not discretionary.”

The policy memo comes on the heels of President Donald J. Trump issuing the *Executive Order on Promoting Free Speech and Religious Liberty* (<https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-free-speech-religious-liberty/>) last week.

To read the policy memo in its entirety, please visit the *Policy Statement on First Amendment memo* (<https://www.usda.gov/sites/default/files/documents/5817-Policy-Statement.pdf>) (PDF, 25.7 KB).

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ATTACHMENT 4



Office of the Attorney General

Washington, D.C. 20530

October 6, 2017

Memorandum for All Executive Departments and Agencies

From: The Attorney General

Subject: *Federal Law Protections for Religious Liberty*

A handwritten signature in black ink, appearing to be the signature of the Attorney General.

The President has instructed me to issue guidance interpreting religious liberty protections in Federal law, as appropriate. Exec. Order No. 13798 §4, 82 *Fed. Reg.* 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and Executive departments in the execution of Federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of Federal law. As James Madison explained in his *Memorial and Remonstrance Against Religious Assessments*, the free exercise of religion “is in its nature an unalienable right” because the duty owed to one’s Creator “is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.”¹ Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and Executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. *The freedom of religion is a fundamental right of paramount importance, expressly protected by Federal law.*

Religious liberty is enshrined in the text of our Constitution and in numerous Federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a

¹James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), in 5 *THE FOUNDERS’ CONSTITUTION* 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

mere policy preference to be traded against other policy preferences. It is a fundamental right.

2. *The free exercise of religion includes the right to **act** or **abstain from action** in accordance with one's religious beliefs.*

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. *The freedom of religion extends to persons **and** organizations.*

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. *Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.*

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with Federal, state, or local governments.

5. *Government may not restrict acts or abstentions because of the beliefs they display.*

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. *Government may not target religious individuals or entities for special disabilities based on their religion.*

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child playground surfaces, it may not deny participation in that program to religious schools. Nor may government deny religious schools—including schools whose curricula and activities include religious elements—the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. *Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.*

Although government generally may subject religious persons and organizations to neutral, generally applicable laws—*e.g.*, across-the-board criminal prohibitions or certain time, place, and manner restrictions on speech—government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment—which prohibits 501(c)(3) nonprofit organizations from intervening in a political campaign on behalf of a candidate—against a religious nonprofit organization under circumstances in which it would not enforce the amendment against a secular nonprofit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no Federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. *Government may not officially favor or disfavor particular religious groups.*

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially preferring one religious group to another. This principle of

denominational neutrality means, for example, that government cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. *Government may not interfere with the autonomy of a religious organization.*

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. *The Religious Freedom Restoration Act of 1993 prohibits the Federal Government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny.*

RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion, unless the Federal Government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by Federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. *RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.*

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for-profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. *RFRA does not permit the Federal Government to second-guess the reasonableness of a religious belief.*

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second-guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second-guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. *A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.*

Because the government cannot second-guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even $\frac{1}{2}$ " beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Department of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve

any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The strict scrutiny standard applicable to RFRA is exceptionally demanding.

Once a religious adherent has identified a substantial burden on his or her religious belief, the Federal Government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the Federal Government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties.

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the Federal Government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as amended, prohibits covered employers from discriminating against individuals on the basis of their religion.

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's protection extends to discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship on the business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no-head-coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.

President Clinton issued *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace* ("Clinton Guidelines") explaining that Federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing. The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. *Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.*

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII's prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. *As a general matter, the Federal Government may not condition receipt of a Federal grant or contract on the effective relinquishment of a religious organization's hiring exemptions or attributes of its religious character.*

Religious organizations are entitled to compete on equal footing for Federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their Federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty—Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies As Employers

Administrative agencies should review their current policies and practices to ensure that they comply with all applicable Federal laws and policies regarding accommodation for religious observance and practice in the Federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the Federal workplace, including through subject-matter experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about Federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith-Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1-2, 45 *Fed. Reg.* 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with Federal law protections for religious liberty as interpreted in this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with Federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). In appro-

priate circumstances, an agency might explain that it will consider requests for accommodations on a case-by-case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with Federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency-wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any “adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of *similar character*” from a non-religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 *Fed. Reg.* at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant-making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization’s Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance affairs of religious organizations or to limit those organizations’ otherwise protected activities.

* * * * *

Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

Appendix

Although not an exhaustive treatment of all Federal protections for religious liberty, this appendix summarizes the key constitutional and Federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the “right to believe and profess whatever religious doctrine [they] desire[.]” *Empl’t Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to *regulate* religious beliefs, *compel* religious beliefs, or *punish* religious beliefs. *See id.*; *see also Sherbert v.*

Verner, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492–93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra-denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 724–25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120–21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. See *Widmar v. Vincent*, 454 U.S. 263, 269 (1981); see also U.S. Const., amend. I, cl. 3. The Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*, 374 U.S. at 402; see also *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious tradition. *Frazee v. Illinois Dept. of Emp't Sec.*, 489 U.S. 829, 833–34 (1989). As the Supreme Court has repeatedly counseled, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be “sincerely held.” *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely-held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to “exercise” religion, not just the freedom to “believe” in religion. See *Smith*, 494 U.S. at 877; see also *Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403–04; *Wisconsin v. Yoder*, 406 U.S. 205, 219–20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts and religious beliefs may be readily apparent (e.g., attendance at a worship service) or not (e.g., service to one's community at a soup kitchen or a decision to close one's business on a particular day of the week). The “exercise of religion” encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. See, e.g., *Hosanna-Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525–26, 547; see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770, 2772–73 (2014) (even a closely held for-profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute, *Smith*, 491 U.S. at 878–79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict “acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display,” *id.* at 877, nor “target the religious for special disabilities based on their religious status,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ___, ___ (2017) (*slip op.* at 6) (internal quotation marks omitted), for it was precisely such “historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (internal quotation marks omitted). The Free Exercise Clause protects against “indirect coercion or penalties on the free exercise of religion” just as surely as it protects against “outright prohibitions” on religious exercise. *Trinity Lutheran*, 582 U.S. at ___ (*slip op.* at 11) (internal quotation marks omitted). “It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official “object or purpose . . . the suppression of religion or religious conduct,” courts must “survey meticulously” the text and op-

eration of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits “gratuitous restrictions on religious conduct”; or “accomplishes . . . ‘religious gerrymander,’ an impermissible attempt to target [certain individuals] and their religious practices.” *Id.* at 533–35, 538 (internal quotation marks omitted). A law is not generally applicable if “in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief,” *id.* at 543, including by “fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does” the prohibited conduct, *id.*, or enables, expressly or *de facto*, “a system of individualized exemptions,” as discussed in *Smith*, 494 U.S. at 884; *see also Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

“Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied.” *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person’s religious character is neither neutral nor generally applicable. *See Trinity Lutheran*, 582 U.S. at ___–___ (slip op. at 9–11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad commercial reasons, is neither neutral, nor generally applicable. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533–36, 542–45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one’s children. *See Smith*, 494 U.S. at 881–82; *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295–97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person’s speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. *See, e.g., Wooley v. Maynard*, 430 U.S. 705, 707–08 (1977) (challenge by Jehovah’s Witnesses to requirement that state license plates display the motto “Live Free or Die”); *Axson-Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God’s name in vain during classroom acting exercises). A law taxing or prohibiting door-to-door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108–09 (1943) (challenge by Jehovah’s Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents’ right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227–29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the “most rigorous” form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (“Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law.”). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and restrictions on the freedom of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). *See Church of the Lukumi Babalu Aye*, 508 U.S. at 546–47. Under this level of scrutiny, government must establish that a challenged law “advance[s] interests of the highest order” and is “narrowly tailored in pursuit of those interests.” *Id.* at 546 (internal quotation marks omitted). “[O]nly in rare cases” will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. *See, e.g., Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69–70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public

parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. *See Trinity Lutheran*, 582 U.S. at ___ (*slip op.* at 6); *cf. Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper’s participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. *See, e.g., Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. *See Town of Greece, NY v. Galloway*, 134 S. Ct. 1811, 1819–20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna-Tabor*, 565 U.S. at 188–89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. *See Galloway*, 134 S. Ct. at 1824; *Larson v. Valente*, 456 U.S. 228, 244–46 (1982). Indeed, “a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion.” *Rosenberger*, 515 U.S. at 839 (emphasis added). That “guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Id.* Thus, religious adherents and organizations may, like non-religious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular-aid program. *See, e.g., Trinity Lutheran*, 582 U.S. at ___ (*slip op.* at 6) (scrap tire program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that “establishe[d] as a condition of office the willingness to eschew certain protected religious practices.” *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); *see also id.* at 629 (*plurality op.*) (“[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.”).

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. §1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. §2000bb *et seq.*, prohibits the Federal Government from “substantially burden[ing] a person’s exercise of religion” unless “it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.* §2000bb–1(a), (b). The Act applies even where the burden arises out of a “rule of general applicability” passed without animus or discriminatory intent. *See id.* §2000bb–1(a). It applies to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” *see* §§2000bb–2(4), 2000cc–5(7), and cov-

ers “individuals” as well as “corporations, companies, associations, firms, partnerships, societies, and joint stock companies,” 1 U.S.C. § 1, including for-profit, closely-held corporations like those involved in *Hobby Lobby*, 134 S. Ct. at 2768.

Subject to the exceptions identified below, a law “substantially burden[s] a person’s exercise of religion,” 42 U.S.C. § 2000bb–1, if it bans an aspect of the adherent’s religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, see *Sherbert*, 374 U.S. at 405–06. The “threat of criminal sanction” will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere \$5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405–06; see also *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717–18. But a law that infringes, even severely, an aspect of an adherent’s religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government’s internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden. See, e.g., *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 448–49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699–700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent’s assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S. Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second-guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division*—one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. § 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the sincerely held religious beliefs of a Jehovah’s Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716–18. In doing so, the Court rejected the lower court’s inquiry into “what [the claimant’s] belief was and what the religious basis of his belief was,” noting that no one had challenged the sincerity of the claimant’s religious beliefs and that “[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.” *Id.* at 714–15 (internal quotation marks omitted). The Court likewise rejected the lower court’s comparison of the claimant’s views to those of other Jehovah’s Witnesses, noting that “[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences.” *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that “the connection between what the objecting parties [were required to] do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they [found] to be morally wrong (destruction of an embryo) [wa]s simply too attenuated.” 134 S. Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely-held religious belief that provision of the coverage was morally wrong, and it was “not for us to say that their religious beliefs are mistaken or insubstantial.” *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. “[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion.” *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the “fundamental, overriding interest in eradicating racial discrimination in education—discrimination that prevailed, with official approval, for the first 165 years of this Nation’s history,” *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the “mandatory and continuous participation” that is “indispensable to the fiscal vitality of the social security system,” *United States v. Lee*, 455 U.S. 252, 258–59 (1982). But “broadly formulated interests justifying the general applicability of government mandates” are insufficient. *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435–38. For example, the military may have a compelling interest in its uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier’s request for an accommodation from the uniform and grooming pol-

ity. *See, e.g.*, Secretary of the Army, Army Directive 2017–03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (2017) (recognizing the “successful examples of Soldiers currently serving with” an accommodation for “the wear of a hijab; the wear of a beard; and the wear of a turban or underturban/patka, with uncut beard and uncut hair” and providing for a reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436–37; *see also Hobby Lobby*, 134 S. Ct. at 2780.

The compelling-interest requirement applies even where the accommodation sought is “an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties.” *Hobby Lobby*, 134 S. Ct. at 2781 n. 37. Although “in applying RFRA ‘courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,’” the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. § 2000bb–1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S. Ct. at 2781 n. 37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is “exceptionally demanding.” *Hobby Lobby*, 134 S. Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government’s stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781–82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress’s leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where “the substantial burden is imposed in a program or activity that receives Federal financial assistance” or “the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.” 42 U.S.C. §§ 2000cc(a)(2), 2000cc–1(b).

RLUIPA’s protections must “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution.” *Id.* § 2000cc3(g). RLUIPA applies to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” *id.* § 2000cc–5(7)(A), and treats “[t]he use, building, or conversion of real property for the purpose of religious exercise” as the “religious exercise of the person or entity that uses or intends to use the property for that purpose,” *id.* § 2000cc–5(7)(B). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc–1(a). That standard “may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” *Id.* § 2000cc–3(c); *cf Holt v. Hobbs*, 135 S. Ct. 853, 860, 864–65 (2015).

With respect to land use in particular, RLUIPA also requires that government not “treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution,” 42 U.S.C. § 2000cc(b)(1), “impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination,” *id.* § 2000cc(b)(2), or “impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction,” *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on

the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262–64 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep’t of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. § 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c–6; in employment, *id.* §§ 2000e, 2000e–2, 2000e–16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real-estate transaction or brokerage services, *id.* §§ 3605, 3606; in Federal jury service, 28 U.S.C. § 1862; in access to limited open forums for speech, 20 U.S.C. § 4071; and in participation in or receipt of benefits from various federally-funded programs, 15 U.S.C. § 3151; 20 U.S.C. §§ 1066c(d), 1071(a)(2), 1087–4, 7231d(b)(2), 7914; 31 U.S.C. § 6711(b)(3); 42 U.S.C. §§ 290cc–33(a)(2), 300w–7(a)(2), 300x–57(a)(2), 300x–65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 98581(a)(2), 10406(2)(B), 10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g., Church of the Lukumi Babalu Aye*, 508 U.S. at 532–33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress’s instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) “fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion,” as well as (2) to “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . religion.” 42 U.S.C. § 2000e–2(a); *see also* 42 U.S.C. § 2000e–16(a) (applying Title VII to certain Federal-sector employers); 3 U.S.C. § 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies “regardless of whether the discrimination is directed against [members of religious] majorities or minorities.” *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71–72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define “[r]eligion” broadly to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j); *Hardison*, 432 U.S. at 74 n. 9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of

any aspect of an employee's religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII's reasonable accommodation requirement is meaningful. As an initial matter, it requires an employer to consider what adjustment or modification to its policies would effectively address the employee's concern, for "[a]n *ineffective* modification or adjustment will not *accommodate*" a person's religious observance or practice, within the ordinary meaning of that word. See *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, see *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that "an undue hardship [on its business] would *in fact* result from *each available* alternative method of accommodation." 29 CFR § 1605.2(c)(1) (emphasis added). "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, "[b]y definition, any special 'accommodation' requires the employer to treat an employee . . . differently, *i.e.*, preferentially." *U.S. Airways*, 535 U.S. at 397; see also *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) ("Title VII does not demand mere neutrality with regard to religious practices—that they may be treated no worse than other practices. Rather, it gives them favored treatment.").

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an "undue hardship," for example, if it would require the employer to breach an otherwise valid collective bargaining agreement, see, e.g., *Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; see also *U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an "undue hardship" if it would impose "more than a *de minimis* cost" on the business, such as in the case of a company where weekend work is "essential to [the] business" and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n. 15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee "in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies of the employer's business." *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person's religious observance and practice, it falls within the scope of Title VII. See 42 U.S.C. §§ 2000e, 2000e-2. Speech or expression outside of the scope of an individual's employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual's employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. Cf. *Abercrombie*, 135 S. Ct. at 2032.

The Federal Government's approach to free exercise in the Federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the Federal Government permits a Federal employee to "keep a Bible or Koran on her private desk and read it during breaks"; to discuss his religious views with other employees, subject "to the same rules of order as apply to other employee expression"; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee's church, except to the extent that such speech becomes excessive or harassing. *Guidelines on Religious Exercise and Religious Expression in the Federal Workplace*, § 1(A), Aug. 14, 1997 (hereinafter "Clinton Guidelines"). The Clinton Guidelines have the force of an Executive Order. See *Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) ("[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order."); see also Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) ("All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully."). The successful experience of the Federal Government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an “aspect[] of religious observance and practice” and is therefore protected by Title VII. 42 U.S.C. §§ 2000e, 2000e–2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee’s religious holidays, 29 CFR § 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the Federal Government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for Federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. § 5550a, and the Clinton Guidelines make clear that “[a]n agency must adjust work schedules to accommodate an employee’s religious observance—for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee’s absence would not otherwise impose an undue burden on the agency,” Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, “such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness.” *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII’s protection against disparate treatment, 42 U.S.C. § 2000e–2(a)(1), is implicated *any time* religious observance or practice is a motivating factor in an employer’s covered decision. *Abercrombie*, 135 S. Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with “an unsubstantiated suspicion” of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes *is* an appropriate factor in employment decisions, and it has limited Title VII’s scope accordingly. Thus, for example, where religion “is a *bona fide* occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise,” employers may hire and employ individuals based on their religion. 42 U.S.C. § 2000e–2(e)(1). Likewise, where educational institutions are “owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society” or direct their curriculum “toward the propagation of a particular religion,” such institutions may hire and employ individuals of a particular religion. *Id.* And “a religious corporation, association, educational institution, or society” may employ “individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” *Id.* § 2000e–1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335–36 (1987).

Because Title VII defines “religion” broadly to include “all aspects of religious observance and practice, as well as belief,” 42 U.S.C. § 2000e(j), these exemptions include decisions “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198–200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school’s decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute’s terms do not limit this exemption to nonprofit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), *codified at* 42 U.S.C. § 2000e–1(a); *see also Hobby Lobby*, 134 S. Ct. at 2773–74; *Corp. of Presiding Bishop*, 483 U.S. at 335–36. The exemption applies whenever the organization is “religious,” which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. *Br. of Amicus Curiae the U.S. Supp. Appellee, Spencer v. World Vision, Inc.*, No. 08–35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in Federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See*

28 CFR app. C; 56 *Fed. Reg.* 35544, 35554 (July 26, 1991) (explaining that “[t]he ADA’s exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations”).

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g., Hosanna-Tabor*, 565 U.S. at 180, 188–90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization’s religious tenets, either because doing so might itself inhibit the organization’s exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649–55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations’ decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna-Tabor*, 565 U.S. at 180, 188–90. It is beyond dispute that “it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of women by the Catholic Church or by an Orthodox Jewish seminary.” *Id.* at 188. The same is true for other employees who “minister to the faithful,” including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194–95; *see also Br. of Amicus Curiae the U.S. Supp. Appellee, Spencer v. World Vision, Inc.*, No. 08–35532 (9th Cir. 2008) (noting that the First Amendment protects “the right to employ staff who share the religious organization’s religious beliefs”).

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization’s associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict scrutiny); *Smith*, 494 U.S. at 882 (“[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns”). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque’s religious men’s meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840–41 (Mass. 2002). The Supreme Court has also held that the government’s interest in addressing sexual-orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, “prohibiting religious organizations from hiring only coreligionists can ‘impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.’” *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be “a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court would consider religious” in applying a non-discrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws—as it has in other contexts, *see, e.g.*, 42 U.S.C. §§ 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. § 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular organizations, *see, e.g.*, 42 U.S.C. §§ 290kk–1, 300x–65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that “[t]he Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organiza-

tions, are able to compete on an equal footing for Federal financial assistance used to support social service programs.” Exec. Order No. 13559, § 1, 75 *Fed. Reg.* 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 *Fed. Reg.* 77141 (2002)). To that end, no organization may be “discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.” *Id.* “Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)” are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the Federal Government and at a separate time and location. *Id.*

The President has assured religious organizations that they are “eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.” *See id.*; *see also* 42 U.S.C. § 290kk-1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, “including the definition, development, practice, and expression of . . . religious beliefs,” so long as they do not use any “direct Federal financial assistance” received “to support or engage in any explicitly religious activities” such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also “use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities,” and they may continue to “retain religious terms” in their names, select “board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents.” *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 *Fed. Reg.* 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do “not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” Exec. Order No. 13279, § 4, *amending* Exec. Order No. 11246, § 204(c), 30 *Fed. Reg.* 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court’s repeated counsel that the decision to borrow statutory text in a new statute is “strong indication that the two statutes should be interpreted *pari passu*.” *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (*per curiam*); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S. 573, 590 (2010). It is also consistent with the Executive Order’s own usage of discrimination on the basis of “religion” as something distinct and more expansive than discrimination on the basis of “religious belief.” *See, e.g.*, Exec. Order No. 13279, § 22(c) (“No organization should be discriminated against on the basis of religion or religious belief . . .” (emphasis added)); *id.* § 22(d) (“All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.”). Indeed, because the Executive Order uses “on the basis of religion or religious belief” in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination “against beneficiaries or potential beneficiaries,” a narrow interpretation of the protection for religious organizations’ hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 22(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program-specific statutes and regulations expressly confirm that “[a] religious organization’s exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its par-

ticipation, or receipt of funds from, a designated program.” 42 U.S.C. § 2290kk–1(e); *see also* 6 CFR § 219.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a Federal grant or contract program on a religious organization’s effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. § 2000bb–1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith-Based Organizations*, 25 Op. O.L.C. at 132. Given Congress’s “recognition that religious discrimination in employment is permissible in some circumstances,” the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization’s receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. § 2000bb–1.

The First Amendment also “supplies a limit on Congress’ ability to place conditions on the receipt of funds.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2328 (2013) (internal quotation marks omitted). Although Congress may specify the activities that it wants to subsidize, it may not “seek to leverage funding” to regulate constitutionally protected conduct “outside the contours of the program itself.” *See id.* Thus, if a condition on participation in a government program—including eligibility for receipt of federally backed student loans—would interfere with a religious organization’s constitutionally protected rights, *see, e.g., Hosanna-Tabor*, 565 U.S. at 188–89, that condition could raise concerns under the “unconstitutional conditions” doctrine, *see All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide education programs or activities receiving Federal financial assistance. Such institutions are exempt from Title IX’s prohibition on sex discrimination in those programs and activities where that prohibition “would not be consistent with the religious tenets of such organization[s].” 20 U.S.C. § 1681(a)(3). Although eligible institutions may “claim the exemption” in advance by “submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization,” 34 CFR § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. § 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of Federal law. For example, it has exempted individuals who, “by reason of religious training and belief,” are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. § 3806(j). It has exempted “ritual slaughter and the handling or other preparation of livestock for ritual slaughter” from Federal regulations governing methods of animal slaughter. 7 U.S.C. § 1906. It has exempted “private secondary school[s] that maintain[] a religious objection to service in the Armed Forces” from being required to provide military recruiters with access to student recruiting information. 20 U.S.C. § 7908. It has exempted Federal employees and contractors with religious objections to the death penalty from being required to “be in attendance at or to participate in any prosecution or execution.” 18 U.S.C. § 3597(b). It has allowed individuals with religious objections to certain forms of medical treatment to opt out of such treatment. *See, e.g.,* 33 U.S.C. § 907(k); 42 U.S.C. § 290bb–36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.,* 26 U.S.C. §§ 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.,* 26 U.S.C. § 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain Federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. § 300a–7(d), (e). It has prohibited discrimination against health care professionals and entities

that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain Federal funds does not require an individual “to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions” nor an entity to “make its facilities available for the performance of” those procedures if such performance “is prohibited by the entity on the basis of religious beliefs or moral convictions,” nor an entity to “provide any personnel for the performance or assistance in the performance of” such procedures if such performance or assistance “would be contrary to the religious beliefs or moral convictions of such personnel.” *Id.* § 300a–7(b). Finally, no “qualified health plan[s] offered through an Exchange” may discriminate against any health care professional or entity that refuses to “provide, pay for, provide coverage of, or refer for abortions,” § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the “policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” 42 U.S.C. § 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians’ right of access for religious purposes to National Park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. §§ 228i(b), 410aaa–75(a), 460uu–47, 543f, 698v–11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians’ use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. § 1996a.

* * * * *

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing Federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (“[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.”).

ATTACHMENT 5



U.S. DEPARTMENT OF AGRICULTURE

**OASCR—Final Action Verification—Review of Expenditures Made by the
Office of the Assistant Secretary for Civil Rights—50099-0001-12**



Collage of images in seven hexagon shapes with white borders: fire-fighting airplane, scientist looking into a microscope, two pigs, shipping containers on a river, sunflowers, a firefighter in a forest, and a migrant harvester.

Report 60026-0001-21
October 2019
Office Of Inspector General

United States Department of Agriculture,
Office of Inspector General,
Washington, D.C. 20250

Date: October 29, 2019
FAV Number: 60026-0001-21
To: Stanley McMichael,
Associate Chief Financial Officer,
Office of the Chief Financial Officer

From: Gil H. Harden,
Assistant Inspector General for Audit
Subject: OASCR—Final Action Verification—*Review of Expenditures Made by the
Office of the Assistant Secretary for Civil Rights—50099-0001-12*

The Office of Inspector General (OIG) completed a final action verification of all nine recommendations in Audit Report No. 50099-0001-12, *Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights*.¹ The purpose of our final action verification was to determine if the Office of the Assistant Secretary for Civil Rights (OASCR) and the Office of Procurement and Property Management (OPPM) provided the Office of the Chief Financial Officer (OCFO) with sufficient documentation to support that the management decision reached with OIG was sufficient to close the audit report recommendations.²

¹ Audit Report 50099-0001-12, *Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights* (Sept. 2015).

² *Final action* is the completion of all actions that management has, in its management decision, concluded are necessary with respect to the finding and recommendations included in an audit report. *Management decision* is an agreement between agency management and OIG on the action(s) taken or to be taken to address a finding and recommendations cited in an audit

Continued

In a memorandum dated July 10, 2017, OCFO reported to OASCR that final action was complete for all recommendations in the subject audit report. Based on our review of the documentation in OCFO's files, we concur with this decision for Recommendations 2–9, which all had sufficient documentation to close the recommendation. *Table 1* summarizes the actions OASCR and OPPM took with respect to Recommendations 2–9. However, we do not concur with this decision for Recommendation 1. *Table 2* provides information on Recommendation 1, including the reason why the documentation provided was not sufficient to close the recommendation.

As noted in its response, OCFO agreed to reopen Recommendation 1 in its Audit Follow-up Tracking and Reporting (AFTR) system. OCFO stated that, subsequent to reopening the recommendation, an official memorandum will be prepared and sent to OASCR. The memorandum will explain that Recommendation 1 has been reopened and will remain open until OCFO receives evidence that annual procurement training requirement has been incorporated into the performance plans for the three employees or an explanation for not including the requirement. In addition, the memorandum will convey OCFO's intentions to conduct periodic follow up meetings to track OASCR's progress in implementing the recommendation.

Background

Our report, *Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights*,³ made nine recommendations to help improve OASCR's processes to ensure that the agency followed established Departmental expenditure and accounting guidelines, maintained sufficient documentation when making expenditures, and determined if the improper payments identified need to be addressed, where appropriate.

OIG, OASCR, and OPPM reached management decision on all nine recommendations and documented this acceptance within two separate memoranda: one dated September 23, 2015, and another dated November 30, 2015. In addition, the memoranda detailed corrective actions OASCR and OPPM needed to implement in order to achieve final action for all recommendations.

In accordance with Departmental Regulation 1720–001, OCFO has the responsibility to determine final action for recommendations for which OIG has agreed to management decision.⁴ As such, OCFO determines if agency-provided documentation of implemented corrective actions meets the intent of the recommendations and achieves final action.

Scope and Methodology

The scope of this final action verification was limited to determining whether OASCR's plan of action for all recommendations in the subject report were completed in accordance with the management decisions reached on September 23, 2015, and November 30, 2015. To accomplish our objective, we reviewed documentation of corrective actions OASCR and OPPM implemented and submitted to OCFO. We did not perform internal control testing or make site visits to determine whether the underlying deficiencies that were initially identified had been corrected by OASCR's plan of action. In addition, we did not provide an opinion on the results of the implementation or effectiveness of each recommendation. We conducted this final action verification in accordance with our internal guidance cited in IG–7710, *Non-audit Work*, and *Final Action Verification Guidance and Procedures*. As a result, we did not conduct the final action verification in accordance with the *Generally Accepted Government Auditing Standards* issued by the Comptroller General of the United States or the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency. However, before we performed the non-audit service, we determined that it would not impair our independence to perform audits, inspections, attestation engagements, or any other future or ongoing reviews of the subject.

report. The management decision must include the agreed upon dollar amount affecting the recommendations and an estimated completion date unless all corrective action is completed by the time agreement is reached. DR 1720–001, Section 6i, *Audit Follow-up and Management Decision* (Nov. 2, 2011).

³ Audit Report 50099–0001–12, *Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights* (Sept. 2015).

⁴ DR 1720–001, Section 7d(1–9), *Audit Follow-up and Management Decision* (Nov. 2, 2011).

Results of Final Action Verification

Recommendations with Sufficient Documentation

We determined that OASCR and OPPM provided sufficient documentation to OCFO of corrective actions implemented to achieve final action for eight recommendations in the subject report (Recommendations 2–9). We detail the actions taken in *Table 1*.

Table 1. Recommendations With Sufficient Documentation to Achieve Final Action

Rec. No.	Recommendation	Action Taken
2	OASCR needs to consult with the Office of General Counsel (OGC) and, where appropriate, with OPPM's Procurement Operations Division (POD), ⁵ to determine the appropriate legal authority and legal instrument that should have been used for the underlying unauthorized commitments resulting in 130 improper payments, totaling over \$1.94 million, and subsequently determine if those transactions should be ratified or otherwise addressed.	OASCR consulted with OGC to determine the legal authority and legal instrument regarding the 130 improper payments. OGC issued a memorandum on its review.
3	OASCR needs to coordinate with OGC in future agreements to ensure the appropriate legal instrument is used prior to obligating funds.	OASCR established a final rule in the <i>Federal Register</i> detailing the appropriate legal instrument to be used when conducting outreach efforts.
4	POD needs to work with the appropriate entities to establish a process for conducting periodic reviews of agency procurement activities exceeding the micro-purchase threshold, to ensure agencies are complying with Departmental policies.	OPPM worked with the appropriate entities to establish a process for conducting periodic reviews of agency procurement activities exceeding the micro-purchase threshold, to ensure agencies are complying with Departmental policies.
5	OASCR needs to notify OCFO and OGC of the potential Antideficiency Act (ADA) violation and take appropriate action based on any determination.	OASCR notified OCFO and OGC of the potential ADA violation. OGC provided a response to OASCR stating there was no further action to take.
6	OASCR needs to establish accounting internal controls related to general ledger (G/L) adjusting entries.	OASCR established a document, <i>Internal Controls over General Ledger Adjustments in the Financial Management Modernization Initiative (FMMI)</i> and provided OCFO with a copy of the G/L documentation template.
7	OASCR needs to research the \$834,000 in G/L adjusting entries identified and make any necessary corrections.	OASCR provided documentation to support that, with the assistance of OCFO, it researched the \$834,000 in G/L adjusting entries. OCFO indicated that no corrections were needed.
8	POD needs to properly ratify, where appropriate, or otherwise address, the nine unauthorized commitments.	OPPM reviewed the documentation for the unauthorized commitments and, where appropriate, ensured compliance with the ratification process or provided a response to address actions found not proper for the procurement process.

⁵ OPPM's Procurement Operations Division (POD) is OASCR's designated contracting and procurement support office and is responsible for contracting for goods and services requested by OASCR.

Table 1. Recommendations With Sufficient Documentation to Achieve Final Action—Continued

Rec. No.	Recommendation	Action Taken
9	POD needs to revise its ratification acquisition operating procedure (AOP) to require the contracting officer to notify the appropriate supervisor regarding an unauthorized commitment and properly document the notification in the file.	OPPM revised AOP Number 4, <i>Ratification of Unauthorized Commitment</i> . It states that when contracting personnel learn that an unauthorized commitment has resulted or the vendor is performing services due to the actions of a Government official who lacked the authority to bind the Government, the contracting officer must immediately notify the vendor and the Government employee making the unauthorized commitment and the employee's director/head of the organization to immediately discontinue performance.

Recommendation without Sufficient Documentation

OASCR did not take proper corrective action and did not provide sufficient documentation to OCFO for Recommendation 1. Although OCFO closed the recommendation, we do not concur that the corrective action implemented achieved final action for this recommendation. We detail the reason for our determination in Table 2. We informed OASCR officials of the results of this final action verification on July 10, 2019.

Table 2. Recommendation Without Sufficient Documentation to Achieve Final Action

Rec. No.	Recommendation	Agreed-upon Action to be Taken	Reason Not Sufficient to Close
1	OASCR needs to train its staff, at least annually, on Federal legal authorities and Departmental policies and procedures regarding proper practices for obligating funds.	OASCR agreed to require procurement staff to take acquisition training in July 2016 and incorporate the annual training requirement into SES and GS-15 staff performance plans.	OASCR did not incorporate the annual training requirement into the performance plans for three of the eight SES and GS-15 staff.

OCFO should reopen Recommendation 1 and obtain the correct documentation to support final action from OASCR. We request that you provide us verification that corrective action was taken to sufficiently achieve final action for this recommendation.

As noted in its response, OCFO agreed to reopen Recommendation 1 in its AFTR system. Subsequent to reopening the recommendation in AFTR, an official memorandum will be prepared and sent to OASCR. The memorandum will explain that Recommendation 1 has been reopened and will remain open until OCFO receives evidence that annual procurement training requirement has been incorporated into the performance plans for the three employees, or an explanation for not including the requirement. In addition, the memorandum will convey OCFO's intentions to conduct periodic follow-up meetings to track OASCR's progress in implementing the recommendation. The memorandum to OASCR and the reopening of Recommendation 1 will be completed by November 8, 2019.

cc: Winona L. Scott, Associate Assistant Secretary for Civil Rights

September 24, 2019

To: Yaris Rivera-Rojas,
Deputy Assistant Inspector General for Audit

From: Stanley McMichael, /s/
Associate Chief Financial Officer,
Fiscal Policy and Planning

Subject: OASCR—Final Action Verification—Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights—Report #50099-0001-12

We have reviewed the Office of Inspector General (OIG) memorandum dated September 9, 2019 on the subject audit. In response to the draft report the Office of the Chief Financial Officer will reopen Recommendation 1 in our "Audit Follow-up,

Tracking and Reporting” system (AFTR), upon receipt of the final (OIG) report. Subsequent to reopening the recommendation in AFTR, an official memorandum will be prepared and sent to the Office of the Assistant Secretary for Civil Rights. The memorandum will explain that Recommendation 1 has been reopened and will remain open until OCFO receives evidence that annual procurement training requirement has been incorporated into the performance plans for the three employees or an explanation for not including.

The memorandum to OASCR and the reopening of Recommendation 1 will be completed by November 8, 2019.

If you have any questions or need additional information, please have a member of your staff contact Annie Walker at (202) 720-9983 or I can be reached at (202) 720-0564.

ATTACHMENT

OASCR—Final Action Verification—Review of Expenditures Made by the Office of the Assistant Secretary for Civil Rights—Report #50099-0001-12

Management Response:

- Reopen Recommendation 1 in AFTR, upon receipt of OIG’s final report.
- Prepare an official memorandum from the Director of the Internal Control Division to the Associate Assistant Secretary for Civil Rights with the details for reopening Recommendation 1 and request evidence that the performance plans for the three employees have been updated to incorporate the annual training requirement.

Date Corrective Action will be completed: November 8, 2019

Responsible Organization: OCFO, Internal Control Division

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